

# Trade Union Act

CHAPTER 475 OF THE REVISED STATUTES, 1989

*as amended by*

1994, c. 35; 2000, c. 4, ss. 81-84; 2004, c. 47;  
2005, c. 61; 2006, c. 48; 2008, c. 67; 2009, c. 29, ss. 1-3;  
2010, c. 37, ss. 134, 136-158; 2010, c. 76; 2011, c. 71;  
2013, c. 43



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 2010, c. 37, ss. 134, 136-158; 2010, c. 76; 2011, c. 71;  
 2013, c. 43

**An Act Respecting the Right of Employees  
 to Organize and Providing for  
 Mediation, Conciliation and  
 Arbitration of Industrial Disputes**

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WHEREAS the Government of Nova Scotia is committed to the development and maintenance of labour legislation and policy designed for the promotion of common well-being through the encouragement of free collective bargaining and the constructive settlement of disputes;

AND WHEREAS Nova Scotia employees, labour organizations and employers recognize and support freedom of association and free collective bargaining as the bases of effective labour relations for the determination of good working conditions and sound labour-management relations in the public and private sectors of Nova Scotia;

AND WHEREAS the Government of Nova Scotia desires to continue, and extend, its support to labour and management in their co-operative efforts to develop good relations and constructive collective bargaining practices, and deems the development of good labour relations to be in the best interests of Nova Scotia:

Preamble *added 2010, c. 37, s. 136.*

**Short title**

**1** This Act may be cited as the *Trade Union Act*. R.S., c. 475, s. 1.

PART I

INDUSTRIAL RELATIONS GENERALLY

INTERPRETATION

**Interpretation**

- 2 (1)** In this Act,
- (a) “bargaining agent” means a trade union that acts on behalf of employees
    - (i) in collective bargaining,
    - (ii) as a party to a recognition agreement with their employer, or
    - (iii) as a party to a collective agreement with their employer;

(b) “Board” means the Labour Board established under the *Labour Board Act*[-;]

(c) “certified bargaining agent” means a bargaining agent that has been certified under this Act or that is party to an agreement filed pursuant to subsection (2) of Section 30 and the certification of which has not been revoked;

(d) “Chief Executive Officer” means the Chief Executive Officer of the Board;

(e) “collective agreement” means a signed agreement in writing between an employer or an employers’ organization acting on behalf of an employer, on the one hand, and a certified bargaining agent of his employees on behalf of the employees, on the other hand, containing terms or conditions of employment of employees that include provisions with reference to rates of pay and hours of work;

(f) “collective bargaining” means negotiating with a view to the conclusion of a collective agreement or the renewal or revision thereof, as the case may be;

(g) “conciliation board” means a board of conciliation and investigation appointed by the Minister in accordance with Section 61;

(h) “conciliation officer” means a person whose duties include the conciliation of disputes and who is under the control and direction of the Minister;

(i) “to contract out” means to make a contract or agreement in accordance with which a significant part of the work regularly done by the employees of an employer is to be done by some other person or persons;

(j) “dispute” or “industrial dispute” means any dispute or difference or apprehended dispute or difference between an employer and one or more of his employees or a bargaining agent acting on behalf of his employees, as to matters or things affecting or relating to terms or conditions of employment or work done or to be done by him or by the employee or employees or as to privileges, rights and duties of the employer or the employee or employees;

(k) “employee” means a person employed to do skilled or unskilled manual, clerical or technical work and includes

(i) police constables or officers employed by a city, town, municipality or village commission, or by a board, commission or agency of, or a corporation controlled by, a city, town, municipality or village commission,

(ii) a person employed or engaged on fishing vessels of all types or in the operation of these vessels on water, if he is paid wages or salary or accepts or agrees to accept a per-



centage or other part of the proceeds of the adventure or of the catch in lieu of or in addition to wages;

(l) “employer” means any person who employs more than one employee;

(m) “employers’ organization” means an organization of employers formed for purposes that include the regulation of relations between employers and employees;

(n) “jurisdictional dispute” means a dispute between two or more unions or between an employer or employers’ organization and one or more unions over the assignment of work;

(o) “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 his employees done to compel his employees, or to aid another employer to compel his employees, to agree to terms or conditions of employment;

(p) “mediation officer” means a person appointed as such by the Minister;

(q) “Minister” means the Minister of Labour and Workforce Development;

(r) *repealed 2010, c. 37, s. 137.*

(s) “parties” with reference to the appointment of, or proceedings before, a conciliation board means the parties who are engaged in the collective bargaining or the dispute in respect of which the conciliation board is or is not to be established;

(t) “regulation” means a regulation of the Governor in Council under this Act;

(u) “rule” means a procedural rule of the Board;

(v) “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;

(w) “trade union” or “union” means any organization of employees formed for purposes that include regulating relations between employers and employees which has a constitution and rules or by-laws setting forth its objects and purposes and defining the conditions under which persons may be admitted as members thereof and continued in membership;

(x) “unit” means a group of two or more employees and “appropriate for collective bargaining” with reference to a unit, means a unit that is appropriate for such purposes whether it be an

employer unit, craft unit, technical unit, plant unit or any other unit and whether or not the employees therein are employed by one or more employers;

(y) words importing the masculine gender include corporations, trade unions and employers' organizations, as well as females.

(2) For the purposes of this Act, no person shall be deemed to be an employee

(a) who is a manager or superintendent, or any other person who, in the opinion of the Board, is employed in a confidential capacity in matters relating to labour relations or who exercises management functions; or

(b) who is a member of the medical, dental, architectural, engineering or legal profession qualified to practise under the laws of a province and employed in that capacity. R.S., c. 475, s. 2; 2010, c. 37, s. 137.

#### POWERS AND DUTIES OF MINISTER

##### **Powers and duties of Minister**

3 The Minister is charged with the administration of this Act and shall exercise the powers and perform the duties imposed on the Minister by this Act. R.S., c. 475, s. 3.

##### **Minister may consult**

3A The Minister may consult with the public, including non-unionized employers and employees, in relation to labour issues that affect non-unionized employers and employees. 2010, c. 37, s. 134.

#### APPLICATION

##### **Application of Act**

4 (1) Subject to subsection (2), this Act applies to all matters within the legislative jurisdiction of the Province except that it does not apply to Her Majesty in right of the Province or to employees of Her Majesty.

(2) This Act applies to any board, commission or similar body that is an agency of Her Majesty in right of the Province and to the employees of the board, commission or body, other than those appointed by the Civil Service Commission or by the Governor in Council.

(3) Notwithstanding subsection (1), Sections 46A, 54A and 56A apply to Her Majesty in right of the Province and employees of Her Majesty in right of the Province.

(3A) Notwithstanding subsection (1), Section 31 applies to Her Majesty in right of the Province and employees of Her Majesty except

(a) persons to whom the *Teachers' Collective Bargaining Act* applies; and

(b) for greater certainty, where, for any purpose other than avoiding obligations under this Act, Her Majesty contracted out or agreed to contract out work regularly done by employees of Her Majesty.

(4) Sections 55 to 57 and 78 apply to complaints of a failure to comply with Section 54A made against

(a) the Nova Scotia Government Employees Union or a person acting on behalf of the Union pursuant to the *Civil Service Collective Bargaining Act*;

(b) the Union determined pursuant to Part I of the *Corrections Act* or a person acting on behalf of the Union; or

(c) the Nova Scotia Highway Workers Union, CUPE Local 1867 or a successor union determined pursuant to the *Highway Workers Collective Bargaining Act* or a person acting on behalf of the Union. R.S., c. 475, s. 4; 2005, c. 61, s. 1; 2010, c. 37, s. 138.

#### LABOUR-MANAGEMENT REVIEW COMMITTEE

##### **Establishment of Committee**

**4A (1)** The Minister shall establish a Labour-management Review Committee whose purpose is to improve labour relations and collective bargaining in the Province.

(2) The Committee is composed of not more than ten members representing in equal numbers unionized labour and employers, all of whom are appointed by the Minister.

(3) Members of the Committee shall be appointed for a three-year term and may be re-appointed, but may not serve more than two consecutive terms.

(4) After serving two consecutive terms, a person is eligible to be re-appointed to the Committee no sooner than three years following the expiry of the person's last term as a member. 2010, c. 37, s. 139.

##### **Expenses and remuneration**

**4B** Persons appointed to the Committee shall be paid expenses incurred by them in the course of carrying out their duties as members of the Committee, plus remuneration as is determined by the Minister. 2010, c. 37, s. 139.

**Co-chairs**

**4C** The Minister shall select two co-chairs of the Committee, one of whom represents unionized labour and one of whom represents unionized employers. 2010, c. 37, s. 139.

**Quorum**

**4D** A quorum of the Committee consists of a majority of members representing unionized labour and a majority of members representing unionized employers. 2010, c. 37, s. 139.

**Function**

**4E** The function of the Committee is to

(a) review, report on and make recommendations to the Minister on labour-relations issues arising out of the *Civil Service Collective Bargaining Act*, Schedule A of the *Corrections Act*, the *Highway Workers Collective Bargaining Act* and the *Trade Union Act*, on an ongoing basis; and

(b) where directed by the Minister, conduct a review of this Act and the statutes referred to in clause (a) or any part of them. 2010, c. 37, s. 139.

**Consultation**

**4F (1)** The Committee shall consult with unionized employers and employees in performing its function under Section 4E.

**(2)** The Committee shall consult non-unionized employers and employees in relation to

(a) certification issues; and

(b) other labour-relations issues that the Minister considers will affect non-unionized employers and employees. 2010, c. 37, s. 139.

**Annual report**

**4G** Each year the Committee shall submit to the Minister an annual report concerning its activities during the previous fiscal year. 2010, c. 37, s. 139.

## GENERAL

**Signing of application or notice or agreement**

**5** For the purposes of this Act, an application to the Board or any notice or any collective agreement may be signed, if it is made, given or entered into

(a) by an employer who is an individual, by the employer himself;

(b) where several individuals who are jointly employers, by a majority of those individuals;

(c) by a corporation, by one of its authorized managers or by one or more of the principal executive officers;

(d) by a trade union or employers' organization, by the president and secretary of the trade union or employers' organization or by any two officers thereof or by any person authorized for this purpose by resolution duly passed at a meeting of the trade union or employers' organization. R.S., c. 475, s. 5.

#### **Service of documents and use of mail**

**6 (1)** For the purpose of this Act, and of any proceedings taken thereunder, any notice or other communication sent through Her Majesty's mails shall be presumed, unless the contrary is proved, to have been received by the addressee in the ordinary course of mail.

**(2)** A document may be served or delivered for the purpose of this Act or any proceedings thereunder in the manner prescribed by regulation or rule. R.S., c. 475, s. 6.

#### **Certificate as prima facie evidence**

**7** A certificate purporting to be signed by the Minister or his Deputy or by an official in his Department stating that a report, request or notice was or was not received or given by the Minister pursuant to this Act, and if so received or given, the date upon which it was so received or given is *prima facie* evidence of the facts stated therein without proof of the signature or of the official character of the person appearing to have signed the same. R.S., c. 475, s. 7.

#### **Irregularity does not invalidate proceeding**

**8** No proceedings under this Act, including arbitration or other proceedings in accordance with Section 42 or 46A and arbitration in accordance with Section 107 are invalid by reason of any defect in form or any technical irregularity. R.S., c. 475, s. 8; 2005, c. 61, s. 2.

#### **Not compellable witness**

**9 (1)** Notwithstanding any other enactment or law, a conciliation officer, mediation officer or any persons employed in the Department of Labour shall not be compelled or required to give in evidence before any court, body or person having authority to receive evidence any information of any kind obtained by him for the purposes of this Act or in the course of his duties under this Act.

**(2)** Notwithstanding any other enactment or law, an arbitrator, mediator-arbitrator or member of an arbitration board appointed pursuant to this Act or a collective agreement, whether selected with or without the consent of the parties involved, shall not be compelled or required to give in evidence before any court, body or person having authority to receive evidence, any information of any kind obtained by him or her for the purpose of this Act or in the course of his or her duties under this Act. R.S., c. 475, s. 9; 2009, c. 29, s. 1.

**Regulations**

**10** The Governor in Council may make regulations as to the time within which anything authorized by this Act shall be done, and also as to any other matter or thing which appears to him necessary or advisable to the effectual working of this Act. R.S., c. 475, s. 10.

**Personnel**

**11** There may be employed any officers, clerks and employees who are necessary for the administration of this Act. R.S., c. 475, s. 11.

**Administration expenses**

**12** Any money required for the administration of this Act, or for the carrying out of any of the provisions of this Act, shall, in the absence of any vote of the Legislative Assembly available therefor, be paid out of the Consolidated Fund of the Province. R.S., c. 475, s. 12.

## RIGHTS OF EMPLOYERS AND EMPLOYEES

**Rights of employee and employer**

**13 (1)** Every employee has the right to be a member of a trade union and to participate in its activities.

**(2)** Every employer has the right to be a member of an employers' organization and to participate in its activities. R.S., c. 475, s. 13.

**Status as employee unaffected**

**14** No person ceases to be an employee within the meaning of this Act by reason only of his ceasing to work for his employer as the result of a lockout or strike or by reason only of dismissal by his employer contrary to this Act or to a collective agreement. R.S., c. 475, s. 14.

**Right of employee to present grievance preserved**

**15** Notwithstanding anything contained in this Act, any employee may present his personal grievance to his employer at any time. R.S., c. 475, s. 15.

~~LABOUR RELATIONS BOARD (NOVA SCOTIA)~~~~COMPOSITION AND OPERATION~~**Labour Board**

**16 (1)** The Board shall be constituted and shall act as a panel of the Board consisting of the Chair or a vice-chair, as the chair of a panel, and two other members of the Board equally representative of employees and employers.

**(2)** Notwithstanding subsection (1), the Chair of the Board or a vice-chair of the Board may sit alone to hear a matter with respect to

- (a) an uncontested application or question; or
- (b) a complaint under subsection (3) of Section 54A,

and, when doing so, may exercise all the powers of the Board.

**(3)** Upon application for an interim order pursuant to Section 51 or Section 52 and in any case where a hearing is not requested, where the Chair deems it appropriate, the Board may deal with any matter by each member conferring separately with the Chief Executive Officer and each deciding the matter without first giving an opportunity to the interested parties to present evidence and make representation. 2010, c. 37, s. 140.

**17** *repealed 2010, c. 37, s. 141.*

### **Regulations**

**18** The Board, with the approval of the Governor in Council, may make regulations prescribing fees and charges to recover the cost of services pursuant to this Act. 2010, c. 37, s. 142.

### **Determination of question arising before Board**

**19 (1)** If in any proceeding before the Board a question arises under this Act as to whether

- (a) a person is an employer or employee;
- (b) an organization or association is an employers' organization or a trade union, or a council of trade unions;
- (c) in any case a collective agreement has been entered into and the terms thereof;
- (d) a collective agreement is by its terms in full force and effect and upon whom it is binding;
- (e) any person has ceased to work for his employer as the result of a lockout or strike or has been dismissed by his employer contrary to this Act or to a collective agreement;
- (f) any party to collective bargaining has failed to comply with Section 35;
- (g) a group of employees is a unit appropriate for collective bargaining;
- (h) an employee belongs to a craft or group exercising technical skills;
- (i) a person is a member in good standing of a trade union;
- (j) an employer has sold, leased, transferred or agreed to sell, lease or transfer his business or the operations thereof or any part

of either of them or has contracted out or agreed to contract out any part of the work done by his employees;

(k) an employer, employer' organization, trade union or other person is doing or has done any act prohibited by Sections 47, 48, 49, 50 or 54A,

the Board shall decide the question and the decision or order of the Board is final and conclusive and not open to question, or review, but the Board may, if it considers it advisable so to do, reconsider any decision or order made by it under this Act, and may vary or revoke any decision or order made by it under this Act.

(2) The Board may of its own motion state a case in writing for the opinion of the Appeal Division of the Supreme Court upon any question that, in the opinion of the Board, is a question of law.

(3) The Appeal Division of the Supreme Court shall hear and determine the question or questions of law arising thereon and remit the matter to the Board, with the opinion of the Court thereon.

(4) Costs shall not be awarded in a case stated under this Section. R.S., c. 475, s. 19; 2005, c. 61, s. 4; 2009, c. 29, s. 2.

#### **Filing of documents with Board**

20 The Board may direct any trade union or employers' organization which is a party to any application for certification, or is a party to an existing collective agreement, to file with the Board

(a) a statutory declaration signed by its president or secretary stating the names and addresses of its officers; and

(b) a copy of its constitution and by-laws,

and the trade union or employers' organization shall comply with the direction within the time prescribed by the Board. R.S., c. 475, s. 20.

#### **Related businesses may be treated as one employer**

21 Where, in the opinion of the Board, associated or related activities or businesses are carried on by or through more than one corporation, firm, syndicate or association, or any combination thereof, under common management or direction, including direction of the work force, the Board may treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purpose of this Act. R.S., c. 475, s. 21.

22 *repealed 2010, c. 37, s. 143.*



## ACQUISITION OF BARGAINING RIGHTS

## CERTIFICATION

**Application for certification as bargaining agent**

**23 (1)** A trade union claiming to have as members in good standing not less than forty per cent of the employees of one or more employers in a unit appropriate for collective bargaining may, subject to the rules of the Board and in accordance with this Section, make application to the Board to be certified as bargaining agent of the employees in the unit.

**(2)** Where no collective agreement is in force and no bargaining agent has been certified under this Act for the unit, the application may be made at any time.

**(3)** Where no collective agreement is in force but a bargaining agent has been certified under this Act for the unit, the application may be made after the expiry of twelve months from the date of certification of the bargaining agent, but not before, except with the consent of the Board.

**(4)** Where a collective agreement relating to the unit is in force and is for a term of not more than three years, the application may be made only after the commencement of the last three months of its operation.

**(5)** Where a collective agreement relating to the unit is in force and is for a term of more than three years, the application may be made only

(a) after the commencement of the thirty-fourth month of its operation and before the commencement of the thirty-seventh month of its operation;

(b) during the three month period immediately preceding the end of each year that the collective agreement continues to operate after the third year of its operation; or

(c) after the commencement of the last three months of its operation.

**(6)** Two or more trade unions claiming to have as members in good standing of the unions a majority of employees in a unit that is appropriate for collective bargaining may join in an application under this Section and the provisions of this Act relating to an application by one union and all matters or things arising therefrom, apply in respect of this joint application and the unions as if it were an application by one union.

**(7)** Where an application is made under this Act for the certification of a union or unions as bargaining agent of employees in a unit, the employer shall not, without consent of the Board, increase or decrease rates of wages or alter any other term or condition of employment of those employees before the Board has given its decision on the application or, in case the Board certifies a union, before

notice to commence collective bargaining has been given under Section 33. R.S., c. 475, s. 23.

#### **Group with technical skills**

**24 (1)** Where a group of employees of an employer belong to a craft or group exercising technical skills by reason of which they are distinguishable from the employees as a whole and the majority of the group are members of one trade union pertaining to that craft or other skills, the trade union may apply to the Board and, subject to Section 23, may be certified as the bargaining agent of the employees in the group, if the group is otherwise appropriate as a unit for collective bargaining.

**(2)** The Board is not required to apply this Section where the group of employees is included in a bargaining unit represented by another bargaining agent at the time the application is made.

**(3)** Where the employees of an employer are certified in accordance with this Section, the employer pursuant to subsection (5) of Section 98 is not bound by any accreditation order made pursuant to this Act. R.S., c. 475, s. 24.

#### **Certification of bargaining agent**

**25 (1)** Where a trade union makes application for certification in accordance with Section 23, the Board shall take a vote of the employees in the unit applied for to determine their wishes with respect to the certification of the applicant trade union as their bargaining agent.

**(2)** The Board shall conduct the vote under subsection (1) at the place of employment of the employees in the unit applied for during regular working hours.

**(3)** Normally the Board shall conduct the vote under subsection (1) no more than five working days after receipt by the Board of the application and three working days after the Board's notices are received by the employer, but if, in the opinion of the Board, special circumstances make it inappropriate to hold a vote until the Board has made such investigations as it deems appropriate including, if the Board so decides, giving interested parties an opportunity to present evidence and make representations, the Board may delay the vote.

**(4)** The Board shall determine whether the unit applied for is appropriate for collective bargaining and the Board may, before certification, if it deems it appropriate to do so, include additional employees in or exclude employees from the unit.

**(5)** Where a vote is counted the Board shall remove and destroy, without counting, the ballots cast by persons not in the bargaining unit determined to be appropriate.

(6) The Board shall take such steps as it deems appropriate to determine the trade union membership of employees in the unit determined to be appropriate for collective bargaining.

(7) When the Board has determined that a unit of employees is appropriate for collective bargaining, if the Board is satisfied that at the date of the filing of the application for certification the applicant trade union had as members in good standing

(a) less than forty per cent of the employees in the unit, the Board shall dismiss the application; or

(b) forty per cent or more of the employees in the unit, the Board shall, subject to subsection (11), take and count the vote.

(8) Where as a result of a vote taken and counted pursuant to clause (b) of subsection (7) the majority of the votes cast are in favour of the applicant trade union, the Board shall, subject to subsection (10), certify the applicant trade union as bargaining agent of the employees in the unit.

(9) Where, in the opinion of the Board, an employer or employer's organization has contravened this Act or regulations made pursuant to this Act in so significant a way that the representation vote does not reflect the true wishes of the employees in the bargaining unit determined to be appropriate for collective bargaining, and in the opinion of the Board the applicant trade union, at the date of the filing of the application for certification, had as members in good standing not less than forty per cent of the employees in the unit, the Board may, in its discretion, certify the trade union as bargaining agent of the employees in the unit.

(10) Where, in the opinion of the Board, the applicant trade union or a representative of the trade union has contravened this Act or regulations made pursuant to this Act in so significant a way that the representation vote does not reflect the true wishes of the employees in the bargaining unit determined to be appropriate for collective bargaining, the Board may, in its discretion, dismiss the application.

(11) Where, in the opinion of the Board, the applicant trade union or a representative of the trade union has contravened this Act or regulations made pursuant to this Act so that the membership information filed with the application does not represent the true wishes of the employees in the unit determined to be appropriate for collective bargaining, the Board may, in its discretion, dismiss the application.

(12) The Board may prescribe the nature of the evidence to be furnished to it, and the Board or any person to whom it may in writing delegate the authority may, for the purpose of making any determination under this Section, and Sections 23, 24, 28, 29 and 30, make or cause to be made any examination of records or other inquiries, hold any hearings or take or supervise the taking and counting of any votes that it deems expedient, and no person shall hinder or obstruct

the Board or any person so authorized in the exercise of the power conferred by this Section.

(13) Where an application for certification under this Act is made by a trade union claiming to have as members in good standing not less than forty per cent of the employees in a unit that is appropriate for collective bargaining, the employees in which are employed by two or more employers, the Board shall not certify the trade union as the bargaining agent of the employees in the unit unless

- (a) all employers of the employees consent thereto; and
- (b) the Board is satisfied that the trade union might be certified by it under this Section as the bargaining agent of the employees in the unit of each employer if separate applications for the purpose were made by the trade union.

(14) The Board in determining the appropriate unit shall have regard to the community of interest among the employees in the proposed unit in such matters as work location, hours of work, working conditions and methods of remuneration.

(15) Notwithstanding anything contained in this Act, no trade union, the administration, management or policy of which is, in the opinion of the Board, dominated or influenced by an employer, so that its fitness to represent employees for the purpose of collective bargaining is impaired or which discriminates against any person because of sex, race, creed, colour, nationality, ancestry or place of origin, shall be certified as the bargaining agent of the employees, nor shall an agreement entered into between that trade union and that employer be deemed to be a collective agreement.

(16) If the Board is not satisfied that a trade union is entitled to be certified under this Section it shall reject the application, and may designate the length of time that must elapse before a new application will be considered by the same applicant. R.S., c. 475, s. 25.

#### **Information and education on collective bargaining process**

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. 2011, c. 71, s. 1.

#### **Employer manufacturing at two or more locations**

26 (1) In this Section,

- (a) “interdependent manufacturing location” means a manufacturing location of an employer in the Province, the continued operation of which is primarily dependent on the continued normal operation of another manufacturing location or manufacturing locations of the employer in the Province; and

(b) “manufacturing” means the making of goods by hand, by machinery or by a combination of processes.

(2) An employer claiming to be engaged in manufacturing and carrying on its operation at two or more interdependent manufacturing locations in the Province may make application to the Board for a determination that the unit appropriate for collective bargaining is the unit consisting of all employees of the employer at all such interdependent manufacturing locations, subject only to the exclusion of such positions as the Board may determine would otherwise normally be excluded.

(3) Where, upon receipt of an application pursuant to subsection (2), the Board is satisfied that

- (a) an employer is engaged in manufacturing; and
- (b) the employer carries on operations in the Province at two or more interdependent manufacturing locations,

the Board shall determine and order that the unit appropriate for collective bargaining is the unit consisting of all employees of the employer at all the locations determined by the Board to be interdependent manufacturing locations, subject only to the exclusion of such positions as the Board may determine would otherwise normally be excluded.

(4) Subject to subsection (6), an application for an order pursuant to this Section may not be made by an employer more than one year following the commencement of production

- (a) at the second manufacturing location in the Province of the employer, claimed by the employer to be an interdependent manufacturing location with the original manufacturing location of the employer in the Province; or
- (b) at any additional manufacturing location in the Province of an employer already affected by an order issued pursuant to this Section.

(5) Notwithstanding subsection (4), an application for an order pursuant to this Section by an employer respecting operations at interdependent manufacturing locations in the Province on the twenty-eighth day of December, 1979, may not be made more than one year following that day.

(6) No application may be made for an order pursuant to this Section where a certification order has been made or voluntary recognition granted pursuant to this Act with respect to one or more of the interdependent manufacturing locations.

(7) Subject to subsections (4), (5) and (6), where any trade union makes an application for certification, the Board shall give to the employer ade-

quate opportunity to make an application pursuant to this Section before proceeding to determine the appropriate unit.

(8) This Section applies to all applications made pursuant to Section 23 which are before the Board on the twenty-eighth day of December, 1979, or which are made on or after that day.

(9) Section 25 shall, except where inconsistent with this Section, continue to apply. R.S., c. 475, s. 26.

#### EFFECT OF CERTIFICATION

##### Effect of certification

27 Where a trade union is certified under this Act as the bargaining agent of the employees in a unit,

(a) the trade union shall immediately replace any other bargaining agent of employees in the unit and shall have exclusive authority to bargain collectively on behalf of employees in the unit and to bind them by a collective agreement until the certification of the trade union in respect of employees in the unit is revoked;

(b) if another trade union had previously been certified as bargaining agent in respect of employees in the unit, the certification of the last mentioned trade union shall be deemed to be revoked in respect of such employees; and

(c) if, at the time of certification, a collective agreement binding on or entered into on behalf of employees in the unit is in force, the trade union shall be substituted as a party to the agreement in place of the bargaining agent that is a party to the agreement on behalf of the employees in the unit. R.S., c. 475, s. 27.

#### AMENDMENT OF CERTIFICATION AND TERMINATION OF BARGAINING RIGHTS

##### Application to amend certification

28 (1) Where a trade union is certified under this Act, an application may be made to the Board to amend the certification to

(a) change the name of the union or employer where the name of the union or employer has been changed;

(b) include specific additional classifications of employees in the unit;

(c) exclude specific classifications of employees from the unit; or

(d) combine previous certification orders into one order.

(2) The application shall be filed with the Board in the form approved by the Board duly verified by a statutory declaration made by a person or persons permitted to sign an application under Section 5. R.S., c. 475, s. 28.

#### **Application to revoke certification**

29 Where certification of a trade union as a bargaining agent has been in effect for not less than twelve months and no collective agreement is in force, or where an application can be made pursuant to subsection (4) or subsection (5) of Section 23, and the Board is satisfied that

- (a) a significant number of members of the trade union allege that the trade union is not adequately fulfilling its responsibilities to the employees in the bargaining unit for which it was certified; or
- (b) the union no longer represents a majority of the employees in the unit,

the Board upon application for revocation of certification may order the taking of a vote to determine the wishes of the employees in the unit concerning revocation of the existing certification and may revoke or confirm the certification in accordance with the result of the vote. R.S., c. 475, s. 29.

### VOLUNTARY RECOGNITION

#### **Agreement for voluntary recognition**

30 (1) Where a trade union purports to represent employees of an employer and intends to bargain collectively on behalf of the employees, the trade union and employer may make and enter into an agreement in writing, which may be part of a collective agreement, whereby

- (a) the employer recognizes the trade union as the exclusive bargaining agent for the employees; and
- (b) the unit of employees to which the agreement extends is defined.

(2) Subject to subsection (3), when an agreement made pursuant to subsection (1) is filed with the Minister, the provisions of this Act shall apply as though the trade union was the certified bargaining agent for the employees in the unit defined by the agreement at the time the agreement was filed.

- (3) This Section does not apply if
  - (a) the trade union that is a party to the agreement does not meet the requirements of subsection (15) of Section 25;
  - (b) at the time the agreement is filed, another trade union
    - (i) has pursuant to this Section acquired bargaining rights on behalf of any of the employees to whom the agreement extends, or

(ii) is certified as or has applied to the Board for certification as bargaining agent for any of the employees to whom the agreement extends; or

(c) the trade union does not represent a majority of the employees in the unit defined by the agreement, but the trade union is deemed to have represented a majority of those employees at all relevant times when the employer has posted a copy of the agreement made pursuant to subsection (1) in a conspicuous place or places upon the premises of the employer at which the agreement is most likely to come to the attention of the employees and thirty days have elapsed from the date of posting.

(4) If any question arises whether a trade union represents or represented a majority of the employees in the unit defined by an agreement made pursuant to this Section, the Board upon application by a trade union shall decide the question and any related question as though the question had arisen in a certification proceeding before the Board.

(5) The provisions of this Act relating to revocation of certification of a trade union as bargaining agent apply to a trade union that is a party to an agreement filed with the Minister and that has the status of a certified bargaining agent by virtue of subsection (2). R.S., c. 475, s. 30; 2010, c. 37, s. 144.

#### TRANSFER OF BUSINESS AND SUCCESSOR RIGHTS

##### **Effect of transfer of business**

**31 (1)** Where an employer sells, leases or transfers or agrees to sell, lease or transfer his business or the operations thereof or any part of either of them and either

(a) the employer or the purchaser, lessee or transferee or any of them is a party to or is bound by a collective agreement with a bargaining agent on behalf of any employees affected by the sale, lease or transfer or contract;

(b) one or more bargaining agents have been certified as bargaining agent for any such employees;

(c) one or more trade unions have applied to be certified as bargaining agent for any such employees; or

(d) one or more bargaining agents have given or are entitled to give notice under either Section 33 or 34 with respect to any such employees,

unless the Board otherwise directs, the collective agreement, certification, application, notice or entitlement to give notice continues in force and is binding upon the purchaser, lessee or transferee.



(2) Where the Board is satisfied that an employer contracted out or agreed to contract out work regularly done by his employees to avoid obligations under this Act, the Board may direct that this Section applies as if the employer had transferred or agreed to transfer part of his business or the operations thereof.

(3) For the purpose of subsection (2), the onus of proving that there has been no contracting out or agreement to contract out work regularly done by employers to avoid obligations under this Act shall be upon the employer.

(4) Any employer, purchaser, lessee, transferee or any bargaining agent, or trade union within subsection (1) or (2) may apply to the Board for the resolution of any question or problem which, as a result of such sale, lease, transfer or contract, has arisen or may arise with respect to any collective agreement, certification, application, notice or entitlement to give notice.

(5) Upon the application being made, the Board shall, by order, make whatever award, give whatever direction or take any other action that in its discretion the Board deems appropriate, to resolve any relevant question or problem and, without restricting the generality of the foregoing, may, by that order or subsequent order,

(a) modify or rescind to the extent that the Board deems necessary or appropriate any collective agreement;

(b) amend or revoke any certification or amend any application for certification;

(c) modify or restrict the operation of any notice or entitlement to give notice;

(d) determine whether employees affected constitute one or more appropriate bargaining units;

(e) if more than one collective agreement is to continue in force, designate which employees are to be covered by each agreement;

(f) modify or restrict the operation or effect of any provision of any collective agreement and define the rights with respect thereto of any employees affected by the sale, lease, transfer or contract;

(g) declare which trade union or trade unions shall be the bargaining agent or agents for the employees;

(h) interpret any provision of any collective agreement.

(6) Until the Board has disposed of any application under this Section, a purchaser, lessee, transferee or contractor, notwithstanding any other provisions of this Act, shall not be required to bargain with any bargaining agent with respect to employees to whom the application relates.

(7) Where an application is made under this Section, the Board may make or cause to be made any examination of records or other inquiries, and may hold any hearings and take any representation votes that it deems necessary and prescribe the nature of evidence to be furnished to the Board.

(8) This Section applies to any amalgamation, annexation or other change in a municipality to which the *Municipal Act* applies, a city or a town, or in a board, school board, commission or agency thereof by or under the *Municipal Boundaries and Representation Act*, the *Education Act* or any other enactment. R.S., c. 475, s. 31.

#### **Determination of question of successor rights**

32 (1) Where a trade union claims that by reason of a merger or amalgamation or a transfer of jurisdiction it is a successor of a trade union that at the time of the merger, amalgamation or transfer of jurisdiction was the bargaining agent of a unit of employees of an employer and any question arises in respect of its rights to act as the successor, the Board, in any proceeding before it or on the application of any person or trade union affected, may by order declare that the successor has or has not, as the case may be, acquired the rights, privileges and duties under this Act of its predecessor.

(2) Before issuing an order under subsection (1), the Board may make or cause to be made any examination of records or other inquiries, and may hold any hearings or representation votes that it deems necessary and prescribe the nature of evidence to be furnished to the Board.

(3) Where the Board makes an affirmative declaration under subsection (1), the successor for the purposes of this Act acquires the rights, privileges and duties of its predecessor, whether under a collective agreement or otherwise. R.S., c. 475, s. 32.

### NEGOTIATION

#### **Notice to commence bargaining where no agreement**

33 Where a trade union is certified as the bargaining agent of employees in a unit and no collective agreement with their employer binding on or entered into on behalf of employees in the unit is in force,

(a) the bargaining agent may, on behalf of the employees in the unit, by notice in writing, require their employer to commence collective bargaining; or

(b) the employer or an employers' organization representing the employer, may, by notice in writing, require the bargaining agent to commence collective bargaining. R.S., c. 475, s. 33.

#### **Notice to commence bargaining where agreement**

34 Either party to a collective agreement may, within the period of two months next preceding the date of expiry of the term of, or preceding termination of

the agreement, by notice in writing, require the other party to the agreement to commence collective bargaining. R.S., c. 475, s. 34.

#### **Effect of notice to commence bargaining**

**35** Where notice to commence collective bargaining has been given under Section 33 or Section 34 or in accordance with a collective agreement which provides for the revision of a provision of the agreement,

(a) the certified bargaining agent and the employer, or an employers' organization representing the employer shall, without delay, but in any case within twenty clear days after the notice was given or such further time as the parties may agree, meet and commence or cause authorized representatives on their behalf to meet and commence to bargain collectively with one another and shall make every reasonable effort to conclude and sign a collective agreement; and

(b) the employer shall not, without consent by the certified or recognized bargaining agent or by the Board, increase or decrease rates of wages or alter any other term or condition of employment of employees in relation to whom notice to bargain has been given until

(i) a new collective agreement has been concluded, or

(ii) the bargaining agent and the employer or representatives authorized by them in that behalf, have bargained collectively and have failed to conclude a collective agreement,

and either

(iii) a conciliation officer has been appointed and has failed to bring about an agreement between the parties and fourteen days have elapsed from the date on which the report of the conciliation officer was made to the Minister, or

(iv) a conciliation board has been appointed to endeavour to bring about agreement between them and seven days have elapsed from the date on which the report of the conciliation board was received by the Minister. R.S., c. 475, s. 35.

#### **Complaint of failure to comply with Section 35**

**36 (1)** Where the Minister receives a complaint in writing from a party to collective bargaining that any other party to the collective bargaining has failed to comply with Section 35 he may refer the complaint to the Board.

**(2)** Where a complaint from a party to collective bargaining is referred to the Board pursuant to subsection (1), the Board shall inquire into the complaint and may dismiss the complaint or may make an order requiring any party to the collective bargaining to do the things that, in the opinion of the Board, are necessary to secure compliance with Section 35, and may order an employer to pay to any employee compensation not exceeding a sum which, in the opinion of the Board, is equivalent to the remuneration that would, but for a failure to comply with

clause (b) of Section 35, have been paid by the employer to the employee. R.S., c. 475, s. 36.

## CONCILIATION

### **Conciliation officer instructed to confer with parties**

**37** Where a notice to commence collective bargaining has been given in accordance with Section 35, and

(a) collective bargaining has not commenced within the time prescribed by this Act;

(b) collective bargaining has commenced and either party thereto requests the Minister in writing to instruct a conciliation officer to confer with the parties thereto to assist them to conclude a collective agreement or a renewal or revision thereof and the request is accompanied by a statement of the difficulties, if any, that have been encountered before the commencement or in the course of the collective bargaining; or

(c) in any other case in which, in the opinion of the Minister, it is advisable so to do,

the Minister may instruct a conciliation officer to confer with the parties engaged in collective bargaining. R.S., c. 475, s. 37.

### **Report of conciliation officer**

**38 (1)** Where a conciliation officer has, under this Act, been instructed to confer with parties engaged in collective bargaining or to any dispute, he shall, within fourteen days after being so instructed or within any longer period that the Minister may from time to time allow, make a report to the Minister setting out

(a) the matters, if any, upon which the parties have agreed;

(b) the matters, if any, upon which the parties cannot agree; and

(c) any other matter that in his opinion is material or relevant or should be brought to the attention of the Minister.

**(2)** When a conciliation officer has made a report under subsection (1) he shall forthwith advise the parties to the dispute that he has made a report.

**(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 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 subclause 35(b)(iii) and clause 47(1)(c). R.S., c. 475, s. 38; 2011, c. 71, s. 2; 2013, c. 43, s. 1.

#### **Appointment of conciliation board**

**39** Where

(a) a conciliation officer fails to bring about an agreement between the parties engaged in collective bargaining; and

(b) within fourteen days after the conciliation officer makes his report to the Minister both parties to the dispute, either jointly or severally, make application to the Minister for the appointment of a conciliation board to endeavour to bring about agreements between them and each nominates a person who is ready and willing to act to be a member of the board,

the Minister shall appoint a board for that purpose. R.S., c. 475, s. 39.

### PREVENTIVE MEDIATION

#### **Mediation officer**

**40 (1)** Notwithstanding any other provision of this Act, the Minister may appoint a person as a mediation officer at any time when he is satisfied that the appointment of a mediation officer may bring about settlement of an industrial dispute or prevent an industrial dispute.

(2) It is the function of a mediation officer, and he has power, to

(a) investigate the causes of an existing or potential industrial dispute;

(b) attempt to bring about a settlement of an industrial dispute or to prevent an industrial dispute; or

(c) assist a trade union and employer in the development of effective labour-management relations.

(3) Subject to subsection (4), a mediation officer who makes an investigation shall make a report to the Minister.

(4) When a mediation officer is unable to effect a settlement of an industrial dispute and the circumstances mentioned in Section 37 exist, the mediation officer may, with the consent of the Minister, make a report in accordance with Section 38 and the report shall be deemed to be a report of a conciliation officer for the purposes of this Act. R.S., c. 475, s. 40.

**Settlement of provisions of first collective agreement****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;

(c) *repealed 2013, c. 43, s. 2.*

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 direct the settlement of the provisions of a first collective agreement between the parties by arbitration 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

(a) an application is made by an employer or bargaining agent under subsection (1);

(b) the parties do not agree to proceed by arbitration under subsection (2); and

(c) regardless of whether Section 35 has been contravened, it appears to the Board that the process of collective bargaining has been unsuccessful because of

(i) the refusal of the employer to recognize the bargaining authority of the bargaining agent,

(ii) the uncompromising nature of any bargaining position adopted by the other party without reasonable justification,

(iii) the failure of the other party to make reasonable or expeditious efforts to conclude a collective agreement, or

(iv) any other reason the Board considers relevant,

the Board, within thirty days of receiving the application, shall either

(d) direct the settlement of the provisions of a first collective agreement by arbitration; or

(e) direct that the parties resume their efforts to conclude a first collective agreement, with the assistance of a conciliation officer, for a period of thirty days.

**(6)** Where the Board directs the parties to resume collective bargaining with the assistance of a conciliation officer under clause (e) of subsection (5) and the parties fail to conclude a first collective agreement within the period referred to therein, the conciliation officer shall notify the Board and the Board shall, within a further thirty days, direct the settlement of the provisions of a first collective agreement by arbitration.

**(7)** Where a direction is given under clause (d) of subsection (5) or subsection (6), the provisions of the first collective agreement between the employer and the bargaining agent must be settled by arbitration conducted in accordance with Section 40B unless, within seven days of the giving of the direction, one of the parties requests in writing that the Board settle the provisions of the first collective agreement.

**(7A)** Where a request is made under subsection (7), the Board shall

(a) appoint a date for and commence a hearing within twenty-one days of receiving the request; and

(b) determine all matters in dispute and release its decision within forty-five days of the commencement of the hearing.

**(7B)** The employees in the bargaining unit shall not strike and the employer shall not lock out the employees if

(a) a notice has been served on the Board under subsection (2) or a direction has been given under subsection (5); and

(b) the provisions of a first collective agreement have not yet been settled.

**(8)** Where notice is served on the Board under subsection (2) or a direction is given under subsection (5) 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 lock-out 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.

**(13)** The Board shall proceed to deal with an application for revocation of certification made under Section 29 before dealing with or continuing to deal with an application made under subsection (1) and, where the Board revokes



the certification of a bargaining agent that is a party to collective bargaining that is the subject of an application made under subsection (1), the Board shall dismiss the application. 2011, c. 71, s. 3; 2013, c. 43, s. 2.

#### **Directed settlement by arbitration**

**40B (1)** Where the Board directs the settlement of a first collective agreement by arbitration under clause (d) of subsection (5) of Section 40A or subsection (6) of Section 40A and neither party requests that the Board settle the first collective agreement under subsection (7) of Section 40A, the parties shall, within ten days of the giving of the direction, attempt to agree on a person satisfactory to both parties to be the arbitrator and, if agreement is reached,

- (a) that person is appointed as the arbitrator; and
- (b) the parties shall notify the Board of the appointment.

**(2)** Where the parties are unable to agree on a person to be the arbitrator pursuant to subsection (1), either party may apply to the Board for the appointment of a person to be the arbitrator and the Board shall, within seven days, appoint a person.

**(3)** The employer and the bargaining agent shall each pay one half of the fees of, and expenses incurred by, the arbitrator.

**(4)** Within sixty days after an arbitrator is appointed under clause (1)(a) or subsection (2), the arbitrator shall settle the provisions of the first collective agreement.

**(5)** The provisions of this Act respecting arbitration apply *mutatis mutandis* to an arbitrator acting under this Section. 2013, c. 43, s. 3.

### COLLECTIVE AGREEMENTS AND ARBITRATION

#### **Parties bound by collective agreement**

**41** A collective agreement entered into by an employer or an employers' organization and a trade union as bargaining agent is, subject to and for the purposes of this Act, binding upon

- (a) the bargaining agent and every employee in the unit of employees; and
- (b) an employer
  - (i) who has entered into the agreement,
  - (ii) on whose behalf the agreement has been entered into,or
  - (iii) who has, by contract with an employer or an employers' organization, agreed to be bound by a collective agreement. R.S., c. 475, s. 41.

**Final settlement provision**

**42 (1)** Every collective agreement shall contain a provision for final and binding settlement without stoppage of work, by arbitration or otherwise, of all differences between the parties to or persons bound by the agreement or on whose behalf it was entered into, concerning its meaning or violation, including any question as to whether a matter is arbitrable.

**(2)** Where a collective agreement does not contain a provision as required by this Section, it shall be deemed to contain the following provision:

Where a difference arises between the parties relating to the interpretation, application or administration of this agreement, including any question as to whether a matter is arbitrable, or where an allegation is made that this agreement has been violated, either of the parties may, after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference or allegation to arbitration. If the parties fail to agree upon an arbitrator, the appointment shall be made by the Minister of Labour and Workforce Development for Nova Scotia upon the request of either party. The arbitrator shall hear and determine the difference or allegation and shall issue a decision and the decision is final and binding upon the parties and upon any employee or employer affected by it.

**(3)** Every party to and every person bound by the agreement, and every person on whose behalf the agreement was entered into, shall comply with the provision for final settlement contained in the agreement. R.S., c. 475, s. 42; 2010, c. 37, s. 145; 2010, c. 76, s. 1.

**Application of Sections 43 to 43I**

**43 (1)** For greater certainty, Sections 43A to 43I, apply to an arbitration under Section 46A.

**(2)** Sections 42 and 43A to 43I apply *mutatis mutandis* to the adjudication of a rights dispute under the *Civil Service Collective Bargaining Act*, the *Highway Workers' Collective Bargaining Act* and Schedule A to the *Corrections Act*. 2010, c. 76, s. 2.

**Interpretation of Sections 43 to 43I**

**43A** In Sections 43B to 43I, “arbitrator” and “arbitration board” mean an arbitrator or arbitration board, as the case may be, appointed pursuant to this Act or a collective agreement. 2010, c. 76, s. 2.

**Powers of arbitrator or arbitration board**

- 43B (1)** An arbitrator or the chair of an arbitration board may
- (a) require any party to furnish particulars before or during a hearing;
  - (b) at any stage of a proceeding, require any party to or person bound by the collective agreement to produce documents or

things that may be relevant to the matter before the arbitrator or the arbitration board, after providing the parties the opportunity to make representations;

(c) fix dates for the commencement and continuation of hearings;

(d) summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath or affirmation and to produce such documents and things as the arbitrator or the arbitration board deems requisite to the full investigation and consideration of a matter, whether admissible in a court of law or not; and

(e) administer oaths and affirmations.

(2) An arbitrator or an arbitration board may

(a) receive and accept such oral or written evidence and information on oath, by affidavit, or otherwise as the arbitrator or arbitration board deems fit, whether the evidence or information is admissible in a court of law or not;

(b) determine the arbitrator's or arbitration board's procedure and consider submissions provided in such form or by such method as the arbitrator or arbitration board considers appropriate;

(c) determine all questions of fact or law that arise out of a dispute;

(d) have regard to the real substance of a matter in dispute between the parties;

(e) at any reasonable time enter any premises, other than a private dwelling, where work is being done or has been done by the employees or in which the employer carries on business or where anything is taking place or has taken place concerning any of the differences submitted to the arbitrator or arbitration board and inspect or view any work, material, machinery, appliance or article at the premises;

(f) authorize any person to do anything that the arbitrator or arbitration board may do under clause (e) and to report to the arbitrator or the arbitration board about it;

(g) make such orders or give such directions as the arbitrator or arbitration board considers appropriate to expedite proceedings or to prevent abuse of the arbitration process;

(h) treat as part of the collective agreement the provisions of any statute of the Province governing relations between the parties to the collective agreement; and

(i) correct in any award any clerical mistake, error or omission.

(3) An arbitrator or arbitration board, and each member of an arbitration board, has, without limiting the powers set out in this Section, the powers, privileges and immunities of a commissioner under the *Public Inquiries Act*. 2010, c. 76, s. 2.

#### **Mediation**

**43C (1)** An arbitrator or an arbitration board may mediate the differences between the parties at any stage in the proceedings with the consent of the parties.

(2) Where the mediation is not successful, the arbitrator or arbitration board retains the power to determine the difference by arbitration. 2010, c. 76, s. 2.

#### **Extension of time**

**43D** An arbitrator or arbitration board may extend the time for the taking of any step in the grievance or arbitration procedure under a collective agreement notwithstanding the expiration of the time if 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. 2010, c. 76, s. 2.

#### **Award implementing settlement of grievance**

**43E** An arbitrator or an arbitration board may issue an award implementing the settlement of a grievance. 2010, c. 76, s. 2.

#### **Oral decision**

**43F (1)** An arbitrator or arbitration board may give an oral decision and, in that case, the arbitrator or arbitration board shall

(a) give the decision promptly after hearings on the matter are concluded;

(b) give a written decision, without reasons, promptly upon the request of either party; and

(c) give written reasons for the decision within a reasonable period of time upon the request of either party.

(2) Where an arbitrator or an arbitration board renders a decision in respect of a dispute or difference, the arbitrator or the chair of the arbitration board shall transmit a copy of the written decision to the Minister and to the parties at the same time. 2010, c. 76, s. 2.

#### **Substitution of penalty**

**43G** Where an arbitrator or arbitration board determines that an employer has imposed a penalty on an employee, the arbitrator or arbitration board may substitute any other penalty that to the arbitrator or arbitration board seems just and reasonable in the circumstances. 2010, c. 76, s. 2.

**Effect upon filing of order or decision**

**43H (1)** Any person or organization affected by any order or decision of an arbitrator or arbitration board may, after fourteen days from the date on which the order or decision is made or given, or from the date provided in it for compliance, whichever is the later date, file in the Supreme Court of Nova Scotia a copy of the order or decision.

**(2)** On filing an order or decision of an arbitrator or arbitration board in the Supreme Court of Nova Scotia under subsection (1), the order or decision shall be registered in the Court and, when registered, has the same force and effect, and all proceedings may be taken thereon, as if the order or decision were a judgment obtained in the Court. 2010, c. 76, s. 2.

**Payment of fees and expenses of arbitrator or arbitration board**

**43I (1)** The employer or the employers' organization and the trade union that are parties to the arbitration shall each pay one half of the fees of, and the expenses incurred by, an arbitrator.

**(2)** Where the arbitration is conducted by an arbitration board, the employer or the employers' organization shall pay the fees and expenses of the member appointed to the arbitration board by the employer or the employers' organization, the trade union shall pay the fees and expenses of the member appointed to the arbitration board by the trade union and the employer or employers' organization and the trade union shall each pay one half of the fees of, and the expenses incurred by, the chair of the arbitration board. 2010, c. 76, s. 2.

**Final settlement provision endures - dispute before strike position**

**44 (1)** Notwithstanding anything contained in a collective agreement, the provision required to be contained therein by subsection (1) of Section 42 shall remain in force after the termination of the collective agreement and until the requirements of subsection (1) of Section 47 have been met.

**(2)** Where a difference arises between the parties to a collective agreement relating to a provision contained in the collective agreement during the period from the date of its termination to the date the requirements of subsection (1) of Section 47 have been met,

(a) an arbitrator or arbitration board may hear and determine the difference; and

(b) Sections 42 and 43 apply to the hearing and determination. R.S., c. 475, s. 44.

**Deemed minimum term of agreement**

**45 (1)** Notwithstanding anything therein contained, every collective agreement shall, if for a term of less than a year, be deemed to be for a term of one year from the date upon which it came or comes into operation, or if for an indeterminate term shall be deemed to be for a term of at least one year from that date and

shall not, except with the consent of the Board, be terminated by the parties thereto within a period of one year from that date.

(2) Nothing in this Section prevents the revision of any provision of a collective agreement, other than a provision relating to the term of the collective agreement, that under the agreement is subject to revision during the term thereof. R.S., c. 475, s. 45.

#### **Duty to file copy of agreement**

46 Each of the parties to a collective agreement shall forthwith upon its execution file one copy with the Minister. R.S., c. 475, s. 46.

#### **Expedited arbitration**

46A (1) In this Section,

(a) “arbitration” means a process for determination of a dispute and includes an adjudication under the *Civil Service Collective Bargaining Act*, the *Corrections Act* or the *Highway Workers Collective Bargaining Act*;

(b) “dispute” means a dispute between the parties to a collective agreement relating to the interpretation, application or administration of the collective agreement or an allegation that the agreement has been violated and includes a rights dispute under the *Civil Service Collective Bargaining Act*, the *Corrections Act* or the *Highway Workers Collective Bargaining Act*.

(2) Subject to subsection (4), a party to a collective agreement may apply to the Minister or the Minister’s designate for an expedited arbitration on a dispute arising out of the collective agreement.

(3) The party making an application under subsection (2) shall send a copy of the application to the other party to the collective agreement.

(4) An application under subsection (2) may be made when

(a) the grievance procedure under the collective agreement has been exhausted;

(b) five months or more have passed since the date on which the dispute was referred to arbitration; and

(c) no hearings have been commenced.

(5) When a party applies under subsection (2), the Minister

(a) shall, where there is no arbitrator appointed, appoint a single arbitrator under subsection (2) of Section 42;

(b) shall, where there is no hearing date set, order the setting down of a hearing date within thirty days of the order unless the parties mutually agree to another date; and

(c) may

(i) order that the decision of the arbitrator be rendered on or before a date specified, or

(ii) where the appointed arbitrator is not available, appoint a different single arbitrator under subsection (2) of Section 42.

(6) An arbitrator appointed under subsection (5) has exclusive jurisdiction to hear and determine the dispute.

(7) An arbitrator shall, when requested by the parties and where appropriate, issue an oral decision no later than seven days after the conclusion of the hearing.

(8) Where an arbitrator provides an oral decision under subsection (7), the arbitrator shall issue to the parties written reasons for the oral decisions within thirty days of the conclusion of the hearing.

(9) Where an arbitrator appointed under this Section withdraws, is incapacitated or otherwise unable to carry out the arbitrator's responsibilities, the Minister may at the request of either party and after consulting with the parties and the arbitrator, if possible, appoint a new arbitrator to hear and determine the dispute.

(10) The decision of an arbitrator pursuant to this Section is final and binding upon the parties and upon any employee or employer affected by it.

(11) The Minister may establish a list of approved arbitrators for appointments under this Section based upon advice provided by an advisory committee.

(12) The Minister shall constitute an advisory committee with the following seven members for the purpose of advising the Minister respecting the selection of arbitrators and matters relating to arbitration:

(a) three members representing trade unions;

(b) three representing employers; and

(c) a designated chair as chosen by the Minister.

(13) The costs of arbitration pursuant to this Section must be shared equally between the parties. 2005, c. 61, s. 6; 2006, c. 48, s. 1.

#### **Parties under Section 46A**

**46B** For the purpose of Section 46A,

- (a) the employer under the *Civil Service Collective Bargaining Act*;
- (b) the Nova Scotia Government Employees Union acting under the *Civil Service Collective Bargaining Act*;
- (c) the Employer under Schedule A to the *Corrections Act*;
- (d) the Union determined pursuant to Part I of the *Corrections Act*;
- (e) the Employer under the *Highway Workers Collective Bargaining Act*; and
- (f) the Nova Scotia Highway Workers Union, CUPE Local 1867, or a successor union determined pursuant to the *Highway Workers Collective Bargaining Act*,

are parties to disputes that relate to them under that Section. 2005, c. 61, s. 6.

#### **Single arbitrator for several disputes**

**46C** Where an application or a number of applications under subsection (2) of Section 46A concerns several disputes arising under the collective agreement, on the request of both parties, the Minister may appoint an arbitrator under subsection (2) of that Section to deal with all of the disputes. 2005, c. 61, s. 6.

### MEDIATION-ARBITRATION

#### **Procedure**

**46D (1)** Notwithstanding any grievance or arbitration provision contained in a collective agreement or deemed to be contained in a collective agreement under subsection (2) of Section 42, the parties to a collective agreement may, at any time, agree to refer one or more grievances to a mediator-arbitrator, for the purpose of resolving the grievances in an expeditious and informal manner.

**(2)** Where the parties to a collective agreement wish to make use of a mediator-arbitrator but are unable to agree upon one, the Minister shall appoint a mediator-arbitrator upon the request of the parties.

**(3)** A mediator-arbitrator appointed under this Section shall attempt to assist the parties to the collective agreement to settle the grievance by mediation.

**(4)** Where the parties to the collective agreement are not able to settle a grievance by mediation, the mediator-arbitrator shall attempt to assist the parties to agree upon the material facts in the dispute and shall then determine the grievance by arbitration.

**(5)** When determining a grievance by arbitration, a mediator-arbitrator may limit the nature and extent of evidence and submissions and may impose such conditions as the mediator-arbitrator considers appropriate.



(6) A mediator-arbitrator shall deliver a decision within thirty days after completing an arbitration of a grievance.

(7) Sections 43 and 44 apply *mutatis mutandis* to a mediator-arbitrator and a settlement, determination or decision under this Section. 2009, c. 29, s. 3.

## STRIKES AND LOCKOUTS

### Restrictions on strike or lockout

**47 (1)** No employee shall strike and no trade union shall declare or authorize a strike of employees, and the employer shall not declare or cause a lock-out of employees until

(a) the trade union is entitled on behalf of the employees by notice under this Act to require the employer to commence collective bargaining; and

(b) the bargaining agent and the employer, or representatives authorized by them in that behalf, have bargained collectively and have failed to conclude a collective agreement or a revision thereof,

and either

(c) a conciliation officer has been appointed and has failed to bring about an agreement between the parties and fourteen days have elapsed from the date on which the report of the conciliation officer was made to the Minister; or

(d) a conciliation board has been appointed to endeavour to bring about agreement between the parties and seven days have elapsed from the date on which the report of the conciliation board was received by the Minister.

(2) No employee shall strike and no trade union shall declare or authorize a strike of employees, and the employer shall not declare or cause a lock-out of employees more than six months after the date upon which the times provided by clause (c) or (d) of subsection (1) has expired unless either party has thereafter requested conciliation services in accordance with Section 37 and the times provided by clause (c) or (d) of subsection (1) have again expired.

(3) Notwithstanding anything contained in this Act,

(a) no person shall declare or authorize a strike and no employee shall strike until after a secret vote by ballot of employees in the unit affected as to whether to strike or not to strike has been taken and the majority of such employees have voted in favour of a strike; and

(b) no person shall declare or authorize a strike or lockout and no employee shall strike until forty-eight hours after receipt by the Minister of a notice of strike or lockout. R.S., c. 475, s. 47.

**Prohibition of strike or lockout**

**48 (1)** Subject to subsection (2), where a collective agreement is in force, except in respect of a dispute that arises between the parties thereto with reference to the revision of a provision of the agreement that by the agreement is expressly subject to revision during the term of the agreement,

(a) no employer bound by or who is a party to the collective agreement shall declare or cause a lockout with respect to any employee bound by the collective agreement or on whose behalf the collective agreement was entered into; and

(b) no employee bound by the collective agreement or on whose behalf a collective agreement has been entered into shall go on strike and no trade union shall declare or authorize a strike of any such employee.

**(2)** Where a dispute arises between the parties to a collective agreement with reference to a revision of a provision of the agreement in accordance with subsection (2) of Section 44, subsection (1) of Section 47 shall apply. R.S., c. 475, s. 48.

**Further restrictions on strike or lockout**

**49 (1)** In any case where a vote of both employers and employees is in favour of the acceptance of the report of a conciliation board, no employer shall cause a lockout and no employee shall go on strike and no person shall declare or authorize a strike or lockout.

**(2)** No employee within the terms of subsection (2) of Section 4 shall strike or participate in a strike until a period of thirty days has elapsed from the expiry of any time during which a strike is prohibited by Section 47.

**(3)** Nothing in this Act shall be interpreted to prohibit the suspension or discontinuance of operations in an employer's establishment, in whole or in part, not constituting a lockout or strike. R.S., c. 475, s. 49; 2004, c. 47, s. 1.

**Interpretation of Sections 50 to 52 - prohibition of work stoppage**

**50 (1)** In this Section and Sections 51 and 52,

(a) "person" includes a trade union, council of trade unions, employee, employer, employers' organization and any agent, attorney or counsel of a person, trade union, council of trade unions, employee, employer or employers' organization;

(b) "work stoppage" means any discontinuance or cessation of all or any part of the normal work or activity carried on by an employer and employees on whose behalf a trade union is certified as bargaining agent caused by

- (i) a lockout or strike prohibited by this Act, or
- (ii) a jurisdictional dispute.

(2) No person shall cause, authorize, participate in or commit a work stoppage. R.S., c. 475, s. 50.

### **Complaint respecting work stoppage**

**51 (1)** Any person who claims to be involved in or affected by acts contrary to Section 50 may make a complaint to the Board identifying the complainant and the circumstances and nature of the work stoppage.

(2) If the Board is satisfied after investigation of the complaint that Section 50 has not been complied with, the Board, notwithstanding any provision of this Act, may issue an interim order requiring any person named in the order to forthwith cease and desist any activity or action or to perform any act or commence any activity or action stated in the interim order.

(3) Where there has been a complaint under subsection (1), the Board may, before or after the making of an interim order under subsection (2), authorize an officer of the Department of Labour or a person designated by the Minister, to inquire into the acts complained of, to endeavour to effect a settlement and to make a report to the Board.

(4) If the officer of the Department of Labour or a person designated by the Minister is unable to effect a settlement or if the complainant or a person named in an interim order so requests in writing, the Board shall conduct a hearing for the purpose of considering evidence and representations together with the report made in accordance with subsection (3) and shall arrive at a decision with respect to the complaint.

(5) The decision shall be in the form of and issued as an order of the Board and may

- (a) require any person to forthwith cease and desist any activity or action or to perform any act or commence any activity or action;
- (b) confirm, vary or rescind an interim order.

(6) An interim order in accordance with subsection (2) or a decision in accordance with subsection (5) may, in the case of a jurisdictional dispute, direct the assignment of work to persons skilled in or belonging to a specific trade or craft or a specific trade union and the direction shall bind and govern all the parties involved in or affected by the jurisdictional dispute unless

- (a) an agreement in writing respecting the assignment of the work made between the employer and the trade union or unions involved in or affected by the jurisdictional dispute is filed with the Board; or
- (b) the jurisdictional dispute is submitted to a tribunal or to arbitration and the tribunal or arbitrator renders a decision that binds the parties to a settlement of the jurisdictional dispute.

(7) For the purposes of subsection (6), where the Board has made a direction with respect to the assignment of work pursuant to Section 52, the Board may include the same direction in an interim order or decision.

(8) An interim order in accordance with subsection (2) or decision of the Board in accordance with subsection (5) shall have the force and effect of law and shall be binding upon and govern the persons involved in or affected by acts contrary to Section 50 and shall bind and govern any person named in the interim order or decision.

(9) For the purposes of this Section, a person is named in an interim order or decision if the person is one of the persons included in classes or groups of persons or in a general description of persons.

(10) The Board may publish an interim order or decision in any manner the Board considers appropriate and may cause a copy of an interim order or decision to be served on, delivered to or otherwise brought to the attention of any person named in the interim order or decision.

(11) An interim order in accordance with subsection (2) is deemed to be in force until a decision in accordance with subsection (5) is made or the Board makes an order rescinding or varying the interim order and a decision in accordance with subsection (5) is deemed to be in force unless the Board makes a further order rescinding or varying the decision. R.S., c. 475, s. 51.

#### **Where work stoppage likely to occur**

**52** (1) Where a person has reasonable grounds for believing and does believe that a stoppage of all or any part of the work carried on by one or more employers and employees represented by one or more trade unions is likely to occur as the result of a jurisdictional dispute, the person may make a complaint to the Board.

(2) The complaint shall identify the complainant and state the grounds for the complaint and the nature of the jurisdictional dispute.

(3) If the Board is satisfied after investigation of the complaint that a stoppage of work is likely to occur as a result of a jurisdictional dispute, the Board may issue an interim order directing the assignment of work to persons skilled in or belonging to a specific trade or craft or belonging to a specific trade union.

(4) A trade union, employer or employers' organization involved in a jurisdictional dispute in respect of which an interim order has been made, may apply to the Board to review the interim order and the Board shall conduct a hearing and may by order confirm, vary or revoke the interim order.

(5) An interim order made by the Board under this Section and any order confirming, varying or revoking the interim order binds and governs all

the parties involved in or affected by the jurisdictional dispute to which the order relates unless

- (a) an agreement in writing respecting the assignment of the work made between the employer and the trade union or unions involved in or affected by the jurisdictional dispute is filed with the Board; or
- (b) the jurisdictional dispute is submitted to a tribunal or to arbitration and the tribunal or arbitrator renders a decision that binds the parties to a settlement of the jurisdictional dispute. R.S., c. 475, s. 52.

#### INTEREST ARBITRATION

##### **Prohibition of strike or lockout of police**

**52A (1)** In this Section, “police bargaining unit” means a unit that includes police constables or officers that has been certified under this Act or that is a party to an agreement filed pursuant to subsection (2) of Section 30 and the certification of which has not been revoked.

- (2) Notwithstanding anything contained in this Act,
  - (a) no police constable or officer or member of a police bargaining unit has the right to strike; and
  - (b) no employer shall lock out a police constable or officer or member of a police bargaining unit.

(3) The right to strike and the right to lock out police constables or officers and members of a police bargaining unit is hereby replaced with interest arbitration.

- (4) *repealed 2008, c. 67, s. 1.*

2004, c. 47, s. 2; 2006, c. 48, s. 3; 2008, c. 67, s. 1.

##### **Prohibition of strike or lockout of firefighters**

**52AA (1)** In this Section,

- (a) “firefighter” means a full-time firefighter and, for greater certainty, does not include a volunteer firefighter;
- (b) “firefighter bargaining unit” means a unit that includes firefighters that has been certified under this Act or that is a party to an agreement filed pursuant to subsection (2) of Section 30 and the certification of which has not been revoked;
- (c) “pre-existing collective agreement” means a collective agreement between a firefighter bargaining unit and an employer which was in effect immediately before this Section coming into force.

(2) Notwithstanding anything contained in this Act,

(a) no firefighter or member of a firefighter bargaining unit has the right to strike; and

(b) no employer shall lock out a firefighter or member of a firefighter bargaining unit.

(3) The right to strike and the right to lock out firefighters and members of a firefighter bargaining unit is hereby replaced with interest arbitration.

(4) *repealed 2010, c. 37, s. 146.*

(5) Notwithstanding subsection (2) or anything else contained in this or any other Act, this Section does not apply to the following firefighter bargaining units, their employer, the union representing those employees and their successors as provided in the following clauses:

(a) the firefighter bargaining unit of the Halifax Regional Municipality as represented by the International Association of Fire Fighters, Local 268 until their pre-existing collective agreement expires on May 31, 2016;

(b) the firefighter bargaining unit of the Town of Yarmouth as represented by the International Association of Fire Fighters, Local 2094 until their pre-existing collective agreement expires on December 31, 2008; and

(c) a firefighter bargaining unit with a pre-existing collective agreement designated in regulations made by the Governor in Council for the purpose of this subsection. 2006, c. 48, s. 4; 2010, c. 37, s. 146.

#### **Restriction on alteration of terms of employment**

**52B** Notwithstanding Section 35, the employer shall not, without consent by the certified or recognized bargaining agent or by the Board, increase or decrease rates of wages or alter any other term or condition of employment of employees in relation to whom notice to bargain has been given until

(a) a new collective agreement has been concluded; or

(b) the bargaining agent and the employer or representatives authorized by them in that behalf have bargained collectively and have failed to conclude a collective agreement and an interest-arbitration board has made an award. 2004, c. 47, s. 2.

#### **Notice of desire to submit to interest arbitration**

**52C** Where

(a) a conciliation officer fails to bring about an agreement between the parties engaged in collective bargaining; and

(b) the conciliation officer makes a report to the Minister,

the employer or the union shall notify the other party in writing of its desire to submit the collective agreement to an interest-arbitration board composed of one person unless the parties agree to submit the collective agreement to an interest-arbitration board of three persons. 2004, c. 47, s. 2.

#### **Interest-arbitration board of one person**

**52D (1)** Where the interest-arbitration board referred to in Section 52C is to be composed of one person, the employer and the union shall, within ten days after delivery of the notification referred to in that Section, attempt to agree on a person satisfactory to both parties to be the interest-arbitration board and, if agreement is reached, that person is appointed as the interest-arbitration board.

**(2)** Where the parties are unable to agree on a person to be the interest-arbitration board pursuant to subsection (1), either party may apply to the Minister to appoint a person to be the interest-arbitration board and the Minister shall appoint a person.

**(3)** The employer and the union shall each pay one half of the fees of, and expenses incurred by, an interest-arbitration board appointed pursuant to subsection (1) or (2).

**(4)** Where an interest-arbitration board is appointed pursuant to subsection (1) or (2) the person appointed is the chair for the purpose of subsection (4) of Section 52F and Section 52G. 2004, c. 47, s. 2.

#### **Interest-arbitration board of three persons**

**52E (1)** Where the employer and the union agree pursuant to Section 52C to appoint an interest-arbitration board composed of three persons, the party that gave notification pursuant to that Section shall, within seven days of the date of the agreement, give notice of its readiness to proceed pursuant to this Section.

**(2)** The party giving the notice referred to in subsection (1) shall in and with the notice give the name of a person to act as its nominee on the interest-arbitration board and request that the other party name a person to act as its nominee on the board.

**(3)** The party to whom notice is given pursuant to subsections (1) and (2) shall, within seven days of the receipt of such notice, appoint a person to be its nominee on the interest-arbitration board and shall, within those seven days, notify in writing the other party of the name of the person so appointed.

**(4)** Where a party fails to appoint a member to the interest-arbitration board and give notice thereof as required by subsection (3), the Minister, on the application of the party who has appointed a member pursuant to subsection (2), shall, within seven days, appoint a person to act on the interest-arbitration board as the nominee of the party who has failed to appoint a member.

(5) The two members appointed pursuant to subsections (2), (3) and (4) shall, within seven days after the day on which the second of them is appointed, appoint a third person to be a member and chair of the interest-arbitration board.

(6) Where the two members fail or neglect to make an appointment as required by subsection (5), the Minister, on the application of either party, shall within seven days appoint a third person to be a member and chair of the interest-arbitration board.

(7) The decision of a majority of the interest-arbitration board shall be the decision of the arbitration board.

(8) The employer shall pay the fees and expenses of the member appointed to the interest-arbitration board by or on behalf of the employer, the union shall pay the fees and expenses of the member appointed to the interest-arbitration board by or on behalf of the union, and the employer and the union shall each pay one half of the fees of, and expenses incurred by, the chair of the interest-arbitration board. 2004, c. 47, s. 2.

#### **Powers and duties of board and effect of award**

**52F (1)** An interest-arbitration board appointed pursuant to Section 52D or 52E or a collective agreement

(a) shall determine the procedure to be followed during the arbitration, but shall give full opportunity to the parties to the proceeding to present evidence and make submissions to the arbitrator; and

(b) has, in relation to any proceedings before the arbitrator, the powers conferred on the Board, in relation to any proceedings before the Board,=

and the parties to the proceedings may

(c) appear and be heard and be represented by counsel; and

(d) call witnesses and examine or cross-examine all witnesses.

(2) As soon as possible after conducting a hearing into the matters referred to it, the interest-arbitration board shall make an award and in its award deal with each item in dispute.

(3) An award of an interest-arbitration board is binding upon

(a) the union and every employee in the unit on whose behalf it was bargaining collectively; and

(b) the employer,



and the employer and the union shall give effect to it.

(4) Every award of an interest-arbitration board must be signed by the chair of the board. 2004, c. 47, s. 2; 2010, c. 37, s. 147.

#### **Report to Minister and parties**

**52G** Where an interest-arbitration board renders an award, the chair of the interest-arbitration board shall make a report and transmit it to the Minister and to the parties. 2004, c. 47, s. 2.

### UNFAIR PRACTICES

#### **Prohibited activities of employer**

**53 (1)** No employer and no person acting on behalf of an employer shall

(a) participate in or interfere with the formation or administration of a trade union or the representation of employees by a trade union; or

(b) contribute financial or other support to a trade union.

(2) An employer is deemed not to contravene subsection (1) by reason only that he

(a) in respect of a trade union that is the bargaining agent for a bargaining unit comprised of or including employees of the employer,

(i) permits an employee or representative of the trade union to confer with him during working hours or to attend to the business of the trade union during working hours without any deduction from wages or any deduction of time worked for the employer,

(ii) provides free transportation to representatives of the trade union for purposes of collective bargaining, the administration of a collective agreement and related matters, or

(iii) permits the trade union to use his premises for the purposes of the trade union; or

(b) contributes financial support to any pension, health or other welfare trust fund the sole purpose of which is to provide pension, health or other welfare rights or benefits to employees.

(3) No employer and no person acting on behalf of an employer shall

(a) refuse to employ or to continue to employ any person or otherwise discriminate against any person in regard to employment or any term or condition of employment, because the person

(i) is or was a member of a trade union,

(ii) has been expelled or suspended from membership in a trade union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union,

(iii) has testified or otherwise participated or may testify or otherwise participate in a proceeding under this Act,

(iv) has made or is about to make a disclosure that he may be required to make in a proceeding under this Act,

(v) has made an application or filed a complaint under this Act,

(vi) has participated in a strike that is not prohibited by this Act or exercised any right under this Act;

(b) impose any condition in a contract of employment that restrains, or has the effect of restraining, an employee from exercising any right conferred upon him by this Act;

(c) suspend, discharge or impose any financial or other penalty on an employee or take any other disciplinary action against an employee, by reason of his refusal to perform all or some of the duties and responsibilities of another employee who is participating in a strike that is not prohibited by this Act;

(d) deny to any employee any pension rights or accrued benefits to which the employee would be entitled but for

(i) the cessation of work by the employee as the result of a lockout or strike that is not prohibited by this Act, or

(ii) the dismissal of the employee contrary to this Act;

(e) seek, by intimidation, threat of dismissal or any other kind of threat, by the imposition of a pecuniary or other penalty or by any other means, to compel a person to refrain from becoming or to cease to be a member, officer or representative of a trade union or to refrain from

(i) testifying or otherwise participating in a proceeding under this Act,

(ii) making a disclosure that he may be required to make in a proceeding under this Act,

(iii) making an application or filing a complaint under this Act;

(f) suspend, discharge or impose any financial or other penalty on a person employed by him, or take any other disciplinary action against such a person, by reason of that person having refused to perform an act prohibited by this Act; or

(g) bargain collectively for the purpose of entering into a collective agreement, or enter into a collective agreement with a trade union in respect of a bargaining unit if another trade union is the bargaining agent for that bargaining unit. R.S., c. 475, s. 53.

#### **Prohibited activities of union**

**54** No trade union and no person acting on behalf of a trade union shall

(a) seek to compel an employer to bargain collectively with the trade union if the trade union is not the bargaining agent for a bargaining unit that includes employees of the employer;

(b) bargain collectively for the purpose of entering into a collective agreement or enter into a collective agreement with an employer in respect of a bargaining unit, if that trade union or person knows or, in the opinion of the Board, ought to know that another trade union is the bargaining agent for that bargaining unit;

(c) participate in or interfere with the formation or administration of an employers' organization;

(d) except with the consent of the employer of an employee, attempt, at an employee's place of employment during the working hours of the employee, to persuade the employee to become, to refrain from becoming or to cease to be a member of a trade union;

(e) require an employer to terminate the employment of an employee because he has been expelled or suspended from membership in the trade union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union;

(f) expel or suspend an employee from membership in the trade union or deny membership in the trade union to any person by applying to him in a discriminatory manner the membership rules of the trade union;

(g) take disciplinary action against or impose any form of penalty on an employee by applying to him in a discriminatory manner the standards of discipline of the trade union;

(h) expel or suspend an employee from membership in the trade union or take disciplinary action against or impose any form of penalty on an employee by reason of his having refused to perform an act that is contrary to this Act; or

(i) discriminate against a person in regard to employment, a term or condition of employment or membership in a trade union, or intimidate or coerce a person or impose a pecuniary or other penalty on a person, because he

(i) has testified or otherwise participated or may testify or otherwise participate in a proceeding under this Act,

(ii) has made or is about to make a disclosure that he may be required to make in a proceeding under this Act, or

(iii) has made an application or filed a complaint under this Act. R.S., c. 475, s. 54.

#### **Prohibition respecting employee**

**54A (1)** In this Section, “employee” includes an employee within the meaning of each of the *Civil Service Collective Bargaining Act*, Schedule A to the *Corrections Act* and the *Highway Workers Collective Bargaining Act*.

**(2)** In this Section and subsection (3) of Section 55, “trade union” includes

(a) the Nova Scotia Government Employees Union acting under the *Civil Service Collective Bargaining Act*;

(b) the Union determined pursuant to Part I of the *Corrections Act*; and

(c) the Nova Scotia Highway Workers Union, CUPE Local 1867, or a successor union determined pursuant to the *Highway Workers Collective Bargaining Act*.

**(3)** No trade union and no person acting on behalf of a trade union shall act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employee in a bargaining unit for which that trade union is the bargaining agent with respect to the employee’s rights under a collective agreement. 2005, c. 61, s. 7.

#### **Complaint of failure to comply with Section 53 or 54**

**55 (1)** Subject to subsections (2) to (5), any person or organization may make a complaint in writing to the Board that an employer, a person acting on behalf of an employer, a trade union, a person acting on behalf of a trade union or an employee has failed to comply with Section 53 or 54 or subsection (3) of Section 54A.

**(2)** Subject to this Section, a complaint shall be made to the Board pursuant to subsection (1) not later than ninety days from the date on which the complainant knew, or in the opinion of the Board ought to have known, of the action or circumstances giving rise to the complaint.

(3) Subject to subsection (4), no complaint shall be made to the Board under subsection (1) or under subsection (3) of Section 54A on the ground that a trade union or any person acting on behalf of a trade union has failed to comply with clause (f) or (g) of Section 54 or subsection (3) of Section 54A unless

(a) the complainant has presented a grievance or appeal in accordance with any procedure

(i) that has been established by the trade union, and

(ii) to which the complainant has been given ready access;

(b) the trade union

(i) has dealt with the grievance or appeal of the complainant in a manner unsatisfactory to him, or

(ii) has not, within six months from the date on which the complainant first presented his grievance or appeal pursuant to clause (a), dealt with his grievance or appeal; and

(c) the complaint is made to the Board not later than ninety days from the first day on which the complainant could, in accordance with clauses (a) and (b), make the complaint.

(4) The Board may, on application to it by a complainant, hear a complaint in respect of an alleged failure by a trade union to comply with clause (f) or (g) of Section 54 that has not been presented as a grievance or appeal to the trade union, if the Board is satisfied that

(a) the action or circumstance giving rise to the complaint is such that the complaint should be dealt with without delay; or

(b) the trade union has not given the complainant ready access to a grievance or appeal procedure.

(5) Except with the consent in writing of the Minister, no complaint shall be made to the Board under subsection (1) in respect of an alleged failure to comply with clause (g) of subsection (3) of Section 53 or clause (a) or (b) of Section 54. R.S., c. 475, s. 55; 2005, c. 61, s. 8.

#### **Settlement or hearing of complaint required**

**56 (1)** Subject to subsection (2), upon receipt of a complaint made under Section 55 the Board

(a) may assist the parties to the complaint to settle the complaint; and

(b) where the Board does not act under clause (a) or the complaint is not settled within such period as the Board considers to be reasonable in the circumstances, shall hear and determine the complaint.

(2) The Board may refuse to hear and determine any complaint made pursuant to Section 55 in respect of a matter that, in the opinion of the Board, could be referred by the complainant pursuant to a collective agreement to an arbitrator or arbitration board.

(3) Where the complainant establishes that it is reasonable to believe that there may have been failure by an employer or any person acting on behalf of an employer to comply with clause (a) of subsection (3) of Section 53, the burden of proving there is no failure shall be upon the employer or the person acting on behalf of the employer.

(4) The Board may refuse to hear and determine any complaint made pursuant to Section 55 in respect of an alleged failure by a trade union or a person acting on behalf of a trade union to comply with Section 54A if the Board considers the complaint to be frivolous, vexatious or otherwise not worthy of a hearing. R.S., c. 475, s. 56; 2005, c. 61, s. 9.

#### **Review officer**

**56A (1)** Where the Board receives a written complaint that a trade union or a person acting on behalf of a trade union has contravened subsection (3) of Section 54A, the Board shall appoint an employee within the Department of Environment and Labour, or a person appointed by the Minister, as a review officer to review the complaint to determine whether there is sufficient evidence of a breach of the duty of fair representation.

(2) Where a review officer appointed pursuant to subsection (1) is not satisfied on initial review that there is sufficient evidence of a failure to comply with subsection (3) of Section 54A, the review officer shall dismiss the complaint.

(3) Where a review officer decides not to dismiss the complaint pursuant to subsection (2), the review officer shall serve notice of the complaint on the trade union against which the complaint is made and request a response from the trade union.

(4) Where a review officer has received a response from a trade union to a request made pursuant to subsection (3) and is not satisfied that there is sufficient evidence of a failure to comply with subsection (3) of Section 54A, the review officer shall dismiss the complaint.

(5) Where a review officer has received a response from a trade union to a request made pursuant to subsection (3) or the trade union has failed to respond to the request within such period of time as the review officer considers necessary, and where the review officer believes that there has been a failure to comply with subsection (3) of Section 54A, the review officer shall

- (a) effect a settlement, if possible; or
- (b) where not possible, refer the complaint to the Board for disposition.

(6) A review officer appointed pursuant to subsection (1) has the power to order the parties to produce any documents or other things that the review officer considers necessary for the full review of the complaint without holding a hearing.

(7) A decision of a review officer under this Section is final and conclusive and not open to question or review.

(8) Where a complaint has been referred to the Board for disposition pursuant to clause (b) of subsection (5), the Board may

(a) add a party to the proceeding at any stage of the proceeding;

(b) determine a complaint with or without holding a hearing; and

(c) where the Board is satisfied that the trade union or person acting on behalf of a trade union has contravened subsection (3) of Section 54A, the Board may make an order provided for in clause (e) of Section 57 and make an order provided for in Section 78.

(9) A complaint under subsection (1) may be withdrawn by the complainant upon such conditions as the Board may determine. 2005, c. 61, s. 10; 2006, c. 48, s. 2.

#### **Order to comply with Section 53 or 54**

57 Where, under Section 56, the Board determines that a party to a complaint has failed to comply with Section 53 or 54, the Board may, by order, require the party to comply with the said appropriate Section and may,

(a) in respect of a failure to comply with clause (a), (c) or (f) of subsection (3) of Section 53, by order, require an employer to

(i) reinstate any former employee affected by that failure as an employee of the employer, and

(ii) pay to any employee or former employee affected by that failure compensation not exceeding such sum as, in the opinion of the Board, is equivalent to the remuneration that would, but for that failure, have been paid by the employer to the employee;

(b) in respect of a failure to comply with clause (e) of subsection (3) of Section 53, by order, require an employer to rescind any disciplinary action in respect of and pay compensation to any employee affected by the failure, not exceeding such sum as, in the opinion of the Board, is equivalent to any pecuniary or other penalty imposed on the employee by the employer;

(c) in respect of a failure to comply with clause (f) or (h) of Section 54, by order, require a trade union to reinstate or admit an employee as a member of the trade union;

(d) in respect of a failure to comply with clause (g), (h) or (i) of Section 54, by order, require a trade union to rescind any disciplinary action taken in respect of and pay compensation to any employee affected by the failure, not exceeding such sum as, in the opinion of the Board, is equivalent to any pecuniary or other penalty imposed on the employee by the trade union; and

(e) in respect of a failure to comply with Section 54A, by order, require a trade union to rectify any act or omission complained of and refer the matter to arbitration and may order that time limits in a collective agreement be abridged or extended in respect of the arbitration. R.S., c. 475, s. 57; 2005, c. 61, s. 11.

#### **Intimidation respecting union membership**

**58 (1)** No person shall seek by intimidation or coercion to compel a person to become or refrain from becoming or to cease to be a member of a trade union or an employers' organization.

**(2)** Nothing in this Act shall be deemed to deprive an employer of his freedom to express his views so long as he does not use coercion, intimidation, threats or undue influence. R.S., c. 475, s. 58.

### UNION SECURITY

#### **Provisions in collective agreement**

**59 (1)** Nothing in this Act prohibits the parties to a collective agreement from inserting in the agreement a provision requiring, as a condition of employment, membership in a specified trade union or granting a preference of employment to members in a specified trade union.

**(2)** No provision in a collective agreement requiring an employer to discharge an employee because such employee is or continues to be a member of, or engages in activities on behalf of a union other than a specified trade union, is valid. R.S., c. 475, s. 59.

### CHECK-OFF

#### **Deduction for initiation fees and union dues**

**60 (1)** Nothing in this Act prohibits the parties to a collective agreement from inserting in the agreement a provision requiring the employer to honour a written authorization for deduction of wages for initiation fees and union dues to the bargaining agent.

**(2)** Every employer shall honour a written authorization for deduction of wages for initiation fees and union dues to a trade union certified or recognized by the employer as the bargaining agent.



(3) An authorization pursuant to subsection (2) shall be substantially in the following form:

To ..... (name of Employer)

I hereby authorize you to deduct from my wages and pay to (name of trade union) fees in the amount following:

- (1) Initiation fee in the amount of .....
- (2) Dues of \$. .... per .....

(4) Unless the authorization is revoked in writing pursuant to subsection (5), the employer shall remit the dues deducted to the trade union named in the authorization at least once each month together with a written statement of the names of the employees for whom the deductions were made and the amount of each deduction.

(5) Subject to the provisions of a collective agreement, an authorization pursuant to subsection (2) shall continue in effect for a minimum period of three consecutive months and thereafter the employee may revoke such authorization at any time by delivering to the employer revocation in writing.

(6) If an authorization is revoked pursuant to subsection (5), the employer shall give notice thereof to the trade union. R.S., c. 475, s. 60.

#### CONCILIATION BOARDS AND INDUSTRIAL INQUIRY COMMISSIONS

##### **Composition of conciliation board**

**61 (1)** A board of conciliation and investigation under this Act shall consist of three members appointed in the manner provided in this Section.

(2) Where, pursuant to Section 39, both parties to a dispute have requested the Minister to appoint a conciliation board and have submitted to him nominations of persons to be members of the board, the Minister shall forthwith appoint the persons so nominated to be members of the conciliation board.

(3) The two members appointed under subsection (2) shall, within five days after the day on which they are appointed, nominate a third person who is willing and ready to act to be a member and chairman of the conciliation board and the Minister shall forthwith appoint that person to be a member and to be chairman of the conciliation board.

(4) If the two members appointed under subsection (2) fail or neglect to make a nomination within five days after their appointment, the Minister shall forthwith appoint as the third member and chairman of the conciliation board a person whom he considers fit for that purpose.

(5) When the conciliation board has been appointed, the Minister shall forthwith notify the parties of the names of the members of the board.

(6) Where the Minister has given notice to the parties that a conciliation board has been appointed under this Act, it shall be conclusively presumed that the board described in the notice has been established in accordance with this Act, and no order shall be made or process entered or proceedings taken in any court to question the granting or refusal of a conciliation board, or to review, prohibit or restrain the establishment of that conciliation board or any of its proceedings. R.S., c. 475, s. 61.

#### **Replacement of chairman or other members of board**

**62 (1)** If the chairman of a conciliation board ceases to be a member of the board before it has completed its work, the Minister shall appoint a chairman in his place who shall be selected in the manner prescribed by subsections (3) and (4) of Section 61, except that the other two members must nominate the third person within five days after the day upon which the Minister is advised that the chairman has ceased to be a member of the board.

(2) Upon a person other than the chairman ceasing to be a member of a conciliation board before it has completed its work, the party to the dispute by whom he was nominated shall nominate another person and the Minister shall forthwith appoint that other person to be a member of the conciliation board.

(3) If a party to a dispute who is obliged by subsection (2) to nominate a person fails to do so within five days after the day upon which the Minister is advised that the nomination must be made, the Minister shall forthwith appoint as a member of the conciliation board a person whom he considers fit for that purpose. R.S., c. 475, s. 62.

#### **Oath of office**

**63** Each member of a conciliation board shall, before acting as such, take and subscribe before a person authorized to administer an oath or affirmation, and file with the Minister, an oath or affirmation in the following form:

I do solemnly swear (affirm) that I will faithfully, truly and impartially to the best of my knowledge, skill and ability, execute and perform the office of member of the Conciliation Board appointed to . . . . . and will not, except in the discharge of my duties, disclose to any person any of the evidence or other matter brought before the said Board. So help me God.

R.S., c. 475, s. 63.

#### **Statement to board of matters referred and reconsideration**

**64 (1)** Where the Minister has appointed a conciliation board, he shall forthwith deliver to it a statement of the matters referred to it, and may, either before or after the making of its report, amend or add to that statement.

(2) After a conciliation board has made its report the Minister may direct the conciliation board to reconsider and clarify or amplify the report or any part thereof or to consider and report on any new matter added to the amended statement of matters referred to it and the report of the conciliation board shall not

be deemed to be received by the Minister until the reconsidered report is received. R.S., c. 475, s. 64.

#### **Duties, quorum and decision of board**

**65 (1)** A conciliation board shall, immediately after appointment of the chairman thereof, endeavour to bring about agreement between the parties in relation to the matters referred to it.

**(2)** Except as otherwise provided in this Act, a conciliation board may determine its own procedure, but shall give full opportunity to all parties to present evidence and make representations.

**(3)** The chairman may, after consultation with the other members of the board, fix the time and place of sittings of a conciliation board and shall notify the parties as to the time and place so fixed.

**(4)** The chairman and one other member of a conciliation board shall be a quorum, but, in the absence of a member, the other members shall not proceed unless the absent member has been given reasonable notice of the sitting.

**(5)** The decision of a majority of the members present at a sitting of a conciliation board is the decision of the conciliation board, and in the event that the votes are equal the chairman has a casting vote.

**(6)** The chairman shall forward to the Minister a detailed certified statement of the sittings of the board and of the members and witnesses present at each sitting.

**(7)** The report of the majority of its members is the report of the conciliation board. R.S., c. 475, s. 65.

#### **Witnesses and evidence**

**66 (1)** A conciliation board has the power of summoning before it any witnesses and of requiring them to give evidence on oath, or on solemn affirmation if they are persons entitled to affirm in civil matters, and orally or in writing, and to produce all documents and things which the conciliation board deems requisite to the full investigation and consideration of the matters referred to it, but the information so obtained from such documents shall not, except as the conciliation board deems expedient, be made public.

**(2)** A conciliation board has the same power to enforce the attendance of witnesses and to compel them to give evidence as is vested in any court of record in civil cases.

**(3)** Any member of a conciliation board may administer an oath, and the conciliation board may receive and accept any evidence on oath, affidavit or otherwise as it in its discretion may deem fit and proper whether admissible in evidence in a court of law or not. R.S., c. 475, s. 66.

**Right of entry and inspection**

**67** A conciliation board or a member of a conciliation board or any person who has been authorized for such purpose in writing by a conciliation board may, without any other warrant than this Section, at any time, enter a building, ship, vessel, factory, workshop, place or premises of any kind wherein work is being or has been done or commenced by employees or in which an employer carries on business or any matter or thing is taking place or has taken place, concerning the matters referred to the conciliation board, and may inspect and view any work, material, machinery, appliance or article therein, and interrogate any persons in or upon any such place, matter or thing hereinbefore mentioned, and no person shall hinder or obstruct the board or any person authorized as aforesaid in the exercise of a power conferred by this Section or refuse to answer an interrogation made as aforesaid. R.S., c. 475, s. 67.

**Report of findings and recommendations**

**68** A conciliation board shall, within fourteen days after the appointment of the chairman of the board, or within a longer period that is agreed upon by the parties, or as may from time to time be allowed by the Minister, report its findings and recommendations to the Minister. R.S., c. 475, s. 68.

**Publication and delivery of report to parties**

**69** On receipt of the report of a conciliation board the Minister shall forthwith cause a copy thereof to be sent to the parties and he may cause the report to be published in any manner that he sees fit. R.S., c. 475, s. 69.

**Report and proceedings inadmissible in court**

**70** No report of a conciliation board and no testimony or proceedings before a conciliation board is receivable in evidence in any court in Canada except in the case of a prosecution for perjury. R.S., c. 475, s. 70.

**Failure to report within time limit**

**71** Failure of a conciliation officer or conciliation board to report to the Minister within the time provided in this Act for report shall not invalidate the proceedings of the conciliation officer or conciliation board or terminate the authority of the conciliation board under this Act. R.S., c. 475, s. 71.

**Agreement to be bound by conciliation report**

**72** When a conciliation board has been appointed and at any time before or after the conciliation board has made its report the parties so agree in writing, the recommendation of the conciliation board shall be binding on the parties and they shall give effect thereto. R.S., c. 475, s. 72.

**Promotion of settlement, including industrial inquiry commission**

**73 (1)** The Minister may either upon application or of his own initiative, where he deems it expedient, make or cause to be made any inquiries he thinks fit regarding industrial matters, and may do such things as seem calculated to main-

tain or secure industrial peace and to promote conditions favourable to settlement of disputes.

(2) For any of the purposes of subsection (1) or where in any industry a dispute or difference between employers and employees exists or is apprehended, the Minister may refer the matters involved to a commission, to be designated as an “industrial inquiry commission”, for investigation thereof, as the Minister deems expedient, and for report thereon, and shall furnish the commission with a statement of the matters concerning which the inquiry is to be made, and, in the case of an inquiry involving any particular persons or parties, shall advise such persons or parties of the appointment.

(3) Immediately following its appointment an industrial inquiry commission shall inquire into matters referred to it by the Minister and endeavour to carry out its terms of reference, and in the case of a dispute or difference in which a settlement has not been effected in the meantime, the report of the result of its inquiries, including its recommendations, shall be made to the Minister within fourteen days of its appointment or such extension thereof as the Minister may from time to time grant.

(4) Upon receipt of a report of an industrial inquiry commission relating to any dispute or difference between employers and employees, the Minister shall furnish a copy to each of the parties affected and shall publish the same in such manner as he sees fit.

(5) An industrial inquiry commission shall consist of one or more members appointed by the Minister and Sections 66 and 67 of this Act shall apply, as though enacted in respect of that commission and the commission may determine its own procedure but shall give full opportunity to all parties to present evidence and make representations. R.S., c. 475, s. 73.

#### **Staff, fees and expenses of commission**

74 (1) The Minister may provide an industrial inquiry commission with a secretary and such clerical or other assistance as the Minister deems appropriate and fix their remuneration.

(2) The chairman and the other members of an industrial inquiry commission shall be paid such remuneration as the Minister determines along with actual and reasonable travelling and living expenses for each day a member of the commission is absent from the member's place of residence in connection with the work of the commission.

(3) All expenses of an industrial inquiry commission shall be allowed and paid upon the presentation of an account, approved by the chairman of the commission.

(4) The remuneration referred to in subsections (1) and (2) and the expenses referred to in subsection (3) shall be paid by the Minister. 2000, c. 4, s. 82.

#### **Fees and expenses of member of board**

75 Each of the parties before a conciliation board shall pay the fees and expenses of the member appointed to the conciliation board by that party and each of the parties shall pay one half of the fees and expenses of the chairman of the conciliation board. 2000, c. 4, s. 82.

### RETURNS BY TRADE UNIONS

#### **Constitution, by-laws and other documents and financial statements**

76 (1) Every trade union shall file with the Minister a copy duly certified by its proper officers to be true and correct, of its constitution, rules and by-laws, or other instruments or documents containing a full and complete statement of its objects and purposes.

(2) A general statement of the receipts and expenditures of every trade union for the preceding calendar year verified by the affidavit of a responsible officer shall be transmitted to the Minister before the first day of April in every year, and shall be in such form and contain such particulars and such further information as the Minister may from time to time require.

(3) Every member of such trade union shall, on application to the secretary or treasurer of such trade union, be entitled to a copy of such statements free of charge.

(4) Every treasurer or other officer having custody of the funds or property of a trade union shall, at such times as required so to do by the rules or by-laws of the trade union, render to the members of the trade union at a meeting of the trade union a just and true account of all moneys received and paid by him since he last rendered the like account and of the balance then remaining in his hands and of all property of the trade union and shall cause his said account to be audited by a fit and proper person named by the members of the trade union at a meeting thereof, and the treasurer or other officer shall, upon the account being audited, if required by the members, hand over to such person or persons, as the members of the trade union shall designate, the balance which on such audit appears to be due from him and all securities and effects, books, papers and property of the trade union in his hands or custody, and if he fails to do so any such person or persons so designated may, on behalf of the trade union, sue the treasurer or other officer in any competent court for the balance appearing to have been due from him upon the account last rendered by him and for all the moneys since received by him on account of the said trade union, and for the securities and effects, books, papers and property in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of the trade union. R.S., c. 475, s. 76.

## ENFORCEMENT AND PENALTIES

**Enforcement of order to pay money**

77 (1) Where an order of the Board made under this Act or a decision of an arbitrator under Part II requires any person, employer, employers' organization or other person to pay a sum of money or an amount of money computed by reference to any factor mentioned in the order or decision, the person entitled to the payment may bring an action in any court of competent jurisdiction to recover the sum of money or the amount computed in accordance with the order.

(2) In an action pursuant to subsection (1), evidence that the order of the Board or decision of the arbitrator was made shall be proof that the order or decision is valid. R.S., c. 475, s. 77.

**Order when Act contravened**

78 Notwithstanding any other provision of this Act, 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 determination, without limiting the generality of the foregoing, may include, notwithstanding the provisions of any collective agreement, any one or more of

(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 omission 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. R.S., c. 475, s. 78.

**Prosecution for violation of Act**

79 (1) A prosecution for an offence under this Act may be brought against an employers' organization or a trade union in the name of the organization or union and for the purpose of such a prosecution a trade union or an employers' organization shall be deemed to be a person, and any act or thing done or omitted by an officer or agent of an employers' organization or trade union within the scope of his authority to act on behalf of the organization or union shall be deemed to be an act or thing done or omitted by the employers' organization or trade union.

(2) In any prosecution under this Act against an employer or employers' organization, the act or omission of any manager, superintendent or

other person employed in a confidential capacity in matters relating to labour relations or of any person who exercises management functions shall be deemed to be the act or omission of the employer or employers' organization, as the case may be, by whom such person was employed, unless and until it is proved that such act or omission was without the knowledge or consent of the employer or employers' organization.

(3) An information or complaint in respect of a contravention of this Act may be for one or more offences, and no information, complaint, warrant, conviction or other proceedings in a prosecution is objectionable or insufficient by reason of the fact that it relates to two or more offences. R.S., c. 475, s. 79.

#### **Consent to prosecution**

80 (1) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Minister.

(2) A consent by the Minister indicating that he has consented to the prosecution of a person named therein for an offence under this Act alleged to have been committed, or in the case of a continuing offence, alleged to have commenced, on a date therein set out, shall be a sufficient consent for the purposes of this Section to the prosecution of the person for any offence under this Act committed by or commencing on that date.

(3) This Section does not apply to a prosecution instituted by the Minister or the Attorney General. R.S., c. 475, s. 80.

#### **Complaint of alleged violation of Act**

81 (1) A person claiming to be aggrieved because of an alleged violation of any of the provisions of this Act may make a complaint in writing to the Minister and the Minister, upon receipt of the complaint, may require an industrial inquiry commission appointed by him pursuant to Section 73 or a conciliation officer to investigate and make a report to him in respect of the alleged violation.

(2) Upon receipt of a report pursuant to subsection (1), the Minister shall furnish a copy to each of the parties affected and if the Minister considers it desirable to do so, may publish the same in any manner that he sees fit.

(3) The Minister shall take into account any report made pursuant to this Section or any action taken by the Board upon a complaint referred to it under this Act in granting or refusing to grant consent to prosecute under Section 80. R.S., c. 475, s. 81.

#### **Offence and penalty for contravention of Act**

82 Every person, trade union or employers' organization who does anything prohibited by this Act or who refuses or neglects to do anything required by this Act to be done by him is guilty of an offence and, except where some other pen-



alty is by this Act provided for the act, refusal or neglect, is liable on summary conviction

- (a) if an individual, to a fine not exceeding one thousand dollars;
- or
- (b) if a corporation, trade union or employers' organization, to a fine not exceeding ten thousand dollars. R.S., c. 475, s. 82.

**Offence and penalty for violating ss. 23(7) or 35(b) or order under s. 36(2)**

**83 (1)** Every employer and every person acting on behalf of an employer who increases or decreases a wage rate or alters any term or condition of employment contrary to subsection (7) of Section 23 or clause (b) of Section 35 is guilty of an offence and liable on summary conviction to a fine not exceeding

- (a) five dollars in respect of each employee whose wage rate was so increased or decreased or whose term or condition of employment was so altered; or
- (b) two hundred and fifty dollars,

whichever is the lesser, for each day during which such increase, decrease or alteration continues contrary to this Act.

**(2)** Every employer, employers' organization, trade union or other person in respect of whom an order is made under subsection (2) of Section 36 who fails to comply with the order is guilty of an offence and is liable on summary conviction to a penalty not exceeding one thousand dollars in the case of an individual or ten thousand dollars in any other case. R.S., c. 475, s. 83.

**Penalty for prohibited lockout or unlawful strike**

**84 (1)** Every employer who declares or causes a lockout contrary to this Act is liable upon summary conviction to a penalty not exceeding three hundred dollars for each day that the lockout exists.

**(2)** Every person acting on behalf of an employer who declares or causes a lockout contrary to this Act is liable upon summary conviction to a penalty not exceeding two hundred dollars for each day that the lockout exists.

**(3)** Every trade union that declares or authorizes a strike contrary to this Act is liable upon summary conviction to a penalty not exceeding three hundred dollars for each day that the strike exists.

**(4)** Every officer or representative of a trade union who declares or authorizes a strike contrary to this Act is liable upon summary conviction to a penalty not exceeding two hundred dollars for each day that the strike exists.

**(5)** Any number of such offences arising out of the same declaring or causing or authorizing may be charged against one person in one information or in separate informations, and if charged in one information, the judge of the pro-

vincial court may in one conviction impose as a single penalty the cumulative fines, or terms of imprisonment in default of payment, and no conviction or dismissal in respect of any such offence shall afford a plea of *autre fois convict* or *autre fois acquit* in respect of an information charging an offence on a day subsequent to the day or days in respect of which any such conviction or acquittal was made. R.S., c. 475, s. 84.

**Failure to comply with Section 51 interim order**

**85 (1)** Every person who, knowing that he is required to perform any act or to cease or desist from any act by virtue of an interim order or decision of the Board made pursuant to Section 51,

(a) fails to perform any act required by the interim order or decision; or

(b) fails to cease or desist from any act required by the interim order or decision,

is guilty of an offence and is liable on summary conviction to a penalty not exceeding one thousand dollars, in the case of an individual, or ten thousand dollars in any other case.

**(2)** Subject to subsection (3), evidence that an interim order or decision was made pursuant to Section 51 shall be proof that the person accused had knowledge of the order or decision and the requirements thereof unless the contrary is proved by the person accused.

**(3)** In any prosecution for an offence under subsection (1), evidence that an interim order or decision made pursuant to Section 51 was served on or delivered to or otherwise brought to the attention of the person accused shall be conclusive proof that the person accused had knowledge of the interim order or decision.

**(4)** Each day that a person commits an offence under subsection (1) constitutes a separate offence.

**(5)** An information charging an offence under subsection (1) may contain two or more counts charging the offence on each day that it was alleged to be committed. R.S., c. 475, s. 85.

**Failure to comply with Section 57 order**

**86** Every person, employer, employers' organization or trade union who fails to comply with an order made under Section 57 is guilty of an offence and is liable on summary conviction to a penalty not exceeding one thousand dollars, in the case of an individual, or ten thousand dollars in any other case. R.S., c. 475, s. 86.

**Failure to comply with Section 76**

**87** Every officer of a trade union who fails to comply with Section 76 is liable to a penalty not exceeding one hundred dollars. R.S., c. 475, s. 87.

**Failure to comply with decision of arbitrator**

**88 (1)** Every person, employer, employers' organization or trade union who fails to comply with a decision of an arbitrator made pursuant to Section 42 or Section 107 is guilty of an offence and is liable on summary conviction to a penalty not exceeding one thousand dollars in the case of an individual or ten thousand dollars in any other case.

**(2)** In any prosecution under this Section, in addition to any other method by which the decision of an arbitrator may be proved, the evidence of the arbitrator that he made the decision and communicated the decision to the person, employer, employers' organization or trade union charged shall be conclusive proof that the decision was made and the person, employer, employers' organization or trade union accused had knowledge of the decision. R.S., c. 475, s. 88.

**Use and payment of fine and penalty**

**89** All fines and penalties imposed under this Act shall be payable to the Minister of Finance to and for the public uses of the Province. R.S., c. 475, s. 89.

## WARTIME REGULATIONS CONFIRMED

**Wartime Act or regulations**

**90 (1)** Every regulation, order, decision, determination or agreement, or any other act or thing made, given, done or negotiated under the provisions of the *Wartime Labour Relations (Nova Scotia) Act, 1944*, or of the *Wartime Labour Relations Regulations* (P.C. 1003) or of Order in Council P.C. 5001, shall, in so far as the same might have been done under this Act, be deemed to have been made, given, done or negotiated under the provisions of this Act.

**(2)** Where bargaining representatives were certified under the provisions set forth in subsection (1) and that certification had not been revoked,

(a) if they had been elected or appointed by a trade union, that trade union shall be the certified bargaining agent under this Act;

(b) if they had been elected by employees for their bargaining representatives, they shall be certified bargaining representatives under this Act. R.S., c. 475, s. 90.

## AGREEMENT WITH GOVERNMENT OF CANADA

**Agreement respecting administration of legislation**

**91** Where legislation enacted by the Parliament of Canada and this Act are substantially uniform, the Minister may, on behalf of the Government of Nova Scotia with the approval of the Governor in Council, enter into an agreement with the Government of Canada to provide for the employment by the Government of Nova Scotia in the administration of this Act of persons who are in the employ of the Government of Canada and to provide for the employment by the Government of Canada in the administration of the federal legislation of persons who are in the

employ of the Government of Nova Scotia and to provide for the payments to be made by the Government of Canada to the Government of Nova Scotia and vice versa in respect of such employment. R.S., c. 475, s. 91.

Schedule *repealed 2010, c. 37, s. 158.*

## PART II

### CONSTRUCTION INDUSTRY LABOUR RELATIONS

#### INTERPRETATION

##### **Interpretation of Part II**

**92** In this Part,

(a) “accredited employers’ organization” means an organization of employers that is accredited under this Act as the bargaining agent for a unit of unionized employers in the construction industry;

(b) “appropriate unit” means a unit determined by the Board to be appropriate for collective bargaining purposes;

(c) “construction industry” means the on-site constructing, erecting, altering, decorating, repairing or demolishing of buildings, structures, roads, sewers, water mains, pipe-lines, tunnels, shafts, bridges, wharfs, piers, canals or other works;

(d) “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 as defined;

(e) “employee” means a person employed in the construction industry but does not include

(i) a person who performs management functions or is employed in a confidential capacity in matters relating to labour relations,

(ii) a member of the architectural, engineering or legal profession qualified to practice under the laws of a province and employed in that capacity;

(f) “employer” means any person who employs or in the preceding twelve months has employed, more than one employee and who operates a business in the construction industry;

(g) “employers’ organization” means an organization of employers that is formed for purposes that include the regulation of relations between employers and employees as defined in this Section;

(h) “sector” means one of the following divisions of the construction industry:

- (i) industrial and commercial,
- (ii) housebuilding,
- (iii) sewers, tunnels and water mains,
- (iv) roadbuilding, or any other sectors determined by the Board;

(i) “trade union” or “union” means a trade union that according to established trade union practices pertains to the construction industry;

(j) “unionized employee” means an employee on behalf of whom a trade union or council of trade unions has been certified or recognized as bargaining agent by an employer or employer’s organization in accordance with this Part, where the certification or recognition has not been revoked;

(k) “unionized employer” means an employer of unionized employees in the geographical area or areas and sector concerned. R.S., c. 475, s. 92; 1994, c. 35, s. 2; 2005, c. 61, s. 12; 2010, c. 37, s. 148.

#### APPLICATION [OF PART AND AUTHORITY OF BOARD]

##### **Application of Part I**

**93** Except where inconsistent with Part II, the provisions of Part I, except clause (c) of subsection (3) of Section 30, subsection (3) of Section 38 and Sections 40A, 40B, 46A, 54A and 56A apply to the construction industry and all references therein to “employer” and “trade union” shall be taken to be references to “employers’ organization” and “council of trade unions” where appropriate. R.S., c. 475, s. 93; 1994, c. 35, s. 2; 2005, c. 61, s. 12; 2011, c. 71, s. 4; 2013, c. 43, s. 4.

#### ~~THE CONSTRUCTION INDUSTRY PANEL~~

##### **Authority of Board**

**94 (1)** When a question arises as to whether a matter is a matter relating to the construction industry, the question must be finally determined by the Board.

**(2)** Upon application for an interim order pursuant to Section 51 or 52 or for certification pursuant to Section 95 and in any case where a hearing is not requested, where the Chair deems it appropriate, the Board may deal with any matter by each member conferring separately with the Chief Executive Officer and each deciding the matter without first giving an opportunity to the interested parties to present evidence and make representation. 2010, c. 37, s. 149.

#### CERTIFICATION

##### **Application for certification as bargaining agent**

**95 (1)** A trade union or a council of trade unions claiming to have as members in good standing not less than thirty-five per cent of the employees of one or more employers in the construction industry in a unit appropriate for collective

bargaining may, subject to the rules of the Board and in accordance with Sections 23 and 24, make application to the Board to be certified as bargaining agent of the employees in the unit.

(2) Where a trade union or council of trade unions makes application for certification as bargaining agent of the employees in a unit, the Board

(a) shall determine the unit of employees that is appropriate for collective bargaining by reference to a geographic area;

(b) may designate the whole or any part of the Province as a geographic area and may limit the unit to a designated geographic area; and

(c) may, before certification, if it deems it appropriate to do so, include additional employees in or exclude employees from the unit.

(3) When, pursuant to an application for certification under this Part by a trade union or council of trade unions, the Board has determined the unit appropriate for collective bargaining and consistent with a geographic area established by the Board,

(a) if the Board is satisfied that the applicant trade union or council of trade unions has as members in good standing less than thirty-five per cent of the employees in the appropriate unit the ~~Panel~~ [Board] shall dismiss the application;

(b) if the Board is satisfied that the applicant trade union or council of trade unions has as members in good standing more than fifty per cent of the employees in the appropriate unit the Board may certify the trade union or council of trade unions as the bargaining agent of the employees in the unit;

(c) if the Board is satisfied that the applicant trade union or council of trade unions has as members in good standing not less than thirty-five per cent and not more than fifty per cent of the employees in the appropriate unit, the Board shall forthwith order that a vote be conducted among the employees in the appropriate unit to determine whether the employees select the applicant trade union or council of trade unions to be bargaining agent in their behalf.

(4) Subsections (3), (4), (5), (7) and (8) of Section 25 apply to an application by a trade union or council of trade unions for certification under this Section.

(5) In an application for certification by a council of trade unions, a person who is a member of any constituent trade union shall be deemed by the Board to be a member of the council.

(6) Before the Board certifies a council of trade unions as bargaining agent for the employees of an employer or employers in a bargaining unit

the Board shall satisfy itself that each of the trade unions that is a constituent union of the council has vested appropriate authority in the council to enable it to discharge the responsibilities of a bargaining agent.

(7) Where the Board is of the opinion that appropriate authority has not been vested in the applicant council, the Board may dismiss or postpone disposition of the application to enable the constituent unions to vest such additional or other authority as the Board deems necessary. R.S., c. 475, s. 95; 2010, c. 37, s. 150.

#### **Further to Section 95**

96 (1) Where the Board issues an order dismissing an application pursuant to clause (a) or (c) of subsection (3) of Section 95 and the applicant trade union or council of trade unions requests a hearing, the Board shall hold a hearing and may revoke the order.

(2) Subsection (9) of Section 16 or any provision of the Act or regulations requiring notice shall not apply to an application under Section 95, but upon application by the employer of employees on whose behalf a trade union or council of trade unions has been certified, or by another trade union or council of trade unions, the Board may revoke or vary an order of certification under Section 95 and shall, in every such case, give an opportunity to all interested parties to present evidence and make representations. R.S., c. 475, s. 96; 2010, c. 37, s. 151.

### ACCREDITATION

#### **Application for accreditation**

97 (1) An employers' organization claiming to represent the unionized employers in a geographic area engaged in a particular sector of the construction industry may, subject to the rules of the Board, make application in a form approved by the Board to be accredited as the sole collective bargaining agent for all unionized employers in the sector of the construction industry and the geographic area applied for.

(2) Where an employers' organization makes application for accreditation as sole collective bargaining agent for all unionized employers in a geographic area and sector of the construction industry, the Board

(a) shall determine the geographic area and sector that is appropriate for accreditation;

(b) may designate the whole or any part of the Province as an appropriate geographic area; and

(c) may, before accreditation, if it deems it appropriate to do so, include additional employers in or exclude employers from the unit.

(3) Where, in an application for accreditation, the Board is satisfied either

(a) that the employers' organization has as members a majority of the unionized employers in the geographic area and sector applied for; or

(b) that the employers' organization has as members

(i) no less than thirty-five per cent of the unionized employers in the geographic area and sector applied for, and

(ii) those employers who are members of the employers' organization which employ a majority of employees employed by unionized employers in the geographic area and sector applied for,

the Board may accredit the employers' organization as the sole collective bargaining agent to bargain for all unionized employers in the area and sector.

(4) Upon application for accreditation the Board shall ascertain the number of unionized employers in the geographic area and sector applied for and the number of them who were members of the employers' organization at the time the application was made.

(5) If it deems it advisable, the Board may hold a representation vote of employers in the sector and area applied for.

(6) For purposes of this Section, an employee shall be deemed to be a person who was on the payroll of an employer in the sector and area applied for for the weekly payroll period immediately preceding the date of the application or if, in the opinion of the Board, such payroll period is unsatisfactory for any one or more of the unionized employers in the sector and area applied for, then such other weekly payroll period of any one or more of the employers as the Board considers advisable.

(7) Where the Board is satisfied that the employers' organization has met the requirements herein, it may accredit the employers' organization as the sole bargaining agent to bargain with all trade unions or councils of trade unions for the unionized employers in the sector and area determined by the Board as an appropriate unit.

(8) Before the Board accredits an employers' organization the Board shall satisfy itself that

(a) the employers' organization is a properly constituted organization controlled by its members; and

(b) each of its members has vested appropriate authority in the organization to enable it to discharge the responsibilities of an accredited bargaining agent.

(9) Where the Board is of the opinion that appropriate authority has not been vested in the employers' organization the Board may dismiss or postpone disposition of the application to enable employers who are members of the



employers' organization to vest in the organization whatever additional or other authority the Board deems necessary.

**(10)** Notwithstanding anything contained in this Act, no employers' organization which discriminates against any person because of sex, race, creed, colour, nationality, ancestry or place of origin shall be accredited. R.S., c. 475, s. 97; 2010, c. 37, s. 152.

#### **Effect of accreditation**

**98 (1)** Subject to subsection (6), upon accreditation, all bargaining rights and duties under this Act of employers for whom the accredited employers' organization is or becomes the bargaining agent pass to the accredited employers' organization.

**(2)** Upon accreditation any collective agreement in operation between a trade union or council of trade unions and any employer for whom the accredited employers' organization is or becomes the bargaining agent is binding on the parties thereto until the expiry date of the agreement, regardless of its renewal provisions.

**(3)** Where an employers' organization has been accredited, and where, after the date of the accreditation order, an employer in the sector and area covered by that accreditation order becomes subject to bargaining rights and duties with a union or council of trade unions in accordance with subsection (6), those bargaining rights and duties pass to the accredited employer's organization, whether the employer becomes a member of the accredited employer's organization or not, and the employer is bound by any collective agreement in effect or subsequently negotiated between the accredited employers' organization and that union or council of trade unions in that sector and area of the construction industry.

**(4)** Notwithstanding that a unionized employer's membership in an accredited employers' organization is terminated, the accredited employers' organization retains all bargaining rights and duties gained under this Section on behalf of that employer until the accreditation has been revoked.

**(5)** Notwithstanding anything contained in this Act, where the employees of an employer are certified in accordance with Section 24, the employer is not bound by any accreditation order.

**(6)** In this Part, the bargaining rights and duties of an employer under this Act that pass to an accredited employers' organization are the bargaining rights and duties of that employer in respect of a unit appropriate for bargaining with a union

(a) that has been certified in accordance with Section 95 as bargaining agent for the employees of that employer in that unit;

(b) that has been voluntarily recognized as bargaining agent for the employees of that employer in that unit, in accordance

with Section 30, which voluntary recognition has not accrued as a result of a collective agreement negotiated by an employers' organization or otherwise through the agency of an employers' organization; or

(c) with which that employer has explicitly, in writing, authorized the employers' organization to bargain collectively on its behalf.

(7) For greater certainty, nothing in subsection (6) precludes an accredited employer's organization and a trade union or council of trade unions from entering into a collective agreement that prohibits engaging non-union employees or non-union subcontractors in trades other than those represented by a trade union or council of trade unions that is party to the collective agreement.

(8) Where there is a dispute between a trade union or a council of trade unions and an employer or the accredited employers' organization over whether they are, were or have been bound by a collective agreement by virtue of this Section or Section 100, any of them may apply to the Board and the Board shall decide the issue following such investigation, hearing or other procedure, and on the basis of such evidence, as the Board in its sole discretion considers appropriate, and may make such order as the Board in its sole discretion considers appropriate.

(9) Subsection (8) applies to disputes not fully heard before February 3, 1994. R.S., c. 475, s. 98; 1994, c. 35, s. 3; 2010, c. 37, s. 153.

#### **Dues to accredited employers' organization**

**98A (1)** An accredited employers' organization may require an employer who is bound by a collective agreement entered into by the accredited employers' organization or on whose behalf the accredited employers' organization bargains collectively to pay dues to the accredited employers' organization if the dues

(a) are uniformly required to be paid by all members to the accredited employers' organization; and

(b) are reasonably related to the services performed by the accredited employers' organization in respect of its duties under this Act.

(2) A collective agreement may include terms and conditions requiring an employer to pay the dues referred to subsection (1).

(3) Where an employer fails to pay the dues required under subsection (1), the dues are a debt payable by the employer to the registered employers' organization and may be collected by civil action.

(4) Where an employer is required by the terms and conditions of a collective agreement to pay the dues referred to in subsection (1), any dispute or difference relating to or involving the dues must be resolved in accordance with

Section 107 of the Act notwithstanding any arbitration or arbitration procedure provided for in the collective agreement.

(5) This Section does not restrict the ability of an accredited employers' organization to establish and collect periodic dues, assessments and initiation fees from its members in addition to the dues referred to in subsection (1). 2010, c. 37, s. 154.

#### **Denial of membership of employer**

99 (1) No accredited employers' organization and no person acting on behalf of an accredited employers' organization shall deny membership to any employer for whom it is bargaining agent for a reason other than refusal or failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the employers' organization as a condition of acquiring or retaining membership in the organization.

(2) An employer may make a complaint in writing to the Board that an employers' organization or person acting on behalf of an accredited employers' organization has failed to comply with subsection (1) and the Board has the same power to deal with the complaint as with a complaint under Section 55 of a breach of clause (e) of Section 54. R.S., c. 475, s. 99; 2010, c. 37, s. 155.

#### **Parties bound by collective agreement**

100 (1) Subject to subsection (2) of Section 98 and subsection (3) of this Section, a collective agreement entered into between an employers' organization and a trade union, trade unions or council of trade unions is binding upon the employers' organization, employers whose bargaining rights have passed to the employers' organization engaged in the construction industry in the sector and area covered by the accreditation order, the trade union, trade unions, council of trade unions and upon every employee within the scope of the collective agreement.

(2) No collective agreement shall be individually negotiated between an employer in the accredited sector and area and a trade union or council of trade unions, and if such a collective agreement is entered, it shall not be binding on any person.

(3) Notwithstanding the accreditation of an employers' organization, no unionized employer in the sector and area covered by the accreditation order is bound by a collective agreement entered into by an accredited employers' organization and a trade union or council of trade unions in that area and sector unless that trade union or council of trade unions has acquired rights to bargain with that employer in accordance with subsection (6) of Section 98.

(4) Nothing in subsection (3) of this Section or subsection (6) of Section 98 affects

- (a) any money paid before February 3, 1994; or

(b) any order, decision, award or other legal ruling given or issued in respect of a matter fully heard before February 3, 1994, to the extent it requires the payment of money in respect of any time before February 3, 1994. R.S., c. 475, s. 100; 1994, c. 35, s. 4.

**Application for declaration to revoke accreditation**

**101 (1)** Any of the employers in the unit of employers determined in an accreditation order pursuant to Section 97 may apply to the Board for a declaration that the accreditation is revoked,

(a) where the accreditation order has been in effect for not less than twelve months and the accredited employers' organization is not party to any collective agreement;

(b) after the commencement of the forty-sixth month of the operation of the accreditation order and before the commencement of the forty-ninth month of its operation; or

(c) during the three-month period immediately preceding the end of every third year thereafter.

**(2)** Upon an application under subsection (1) the Board shall ascertain,

(a) the number of employers in the unit of employers on the date of the making of the application;

(b) the number of employers in the unit of employers who, within the two-month period immediately preceding the date of the making of the application, have voluntarily signified in writing that they no longer wish to be represented by the accredited employers' organization; and

(c) the number of unionized employees affected by the application of the employers in the unit of employers on the payroll of each such employer for the weekly payroll period immediately preceding the date of the making of the application or if, in the opinion of the Board, such payroll period is unsatisfactory for any one or more of the employers, such other weekly payroll period for any one or more of the employers as the Board considers advisable.

**(3)** If the Board is satisfied,

(a) that a majority of the employers ascertained in accordance with clause (a) of subsection (2) has voluntarily signified in writing that they no longer wish to be represented by the accredited employers' organization; and

(b) that such majority of employers employed a majority of the employees ascertained in accordance with clause (c) of subsection (2),

the Board may declare the accreditation of the employers' organization revoked.

(4) Upon an application under subsection (1), when the employers' organization informs the Board that it does not desire to continue to represent the employers in the unit of employers, the Board may declare the accreditation of the employers' organization revoked.

(5) Upon the Board making a declaration under subsection (3) or (4), all rights, duties and obligations of the employers' organization under this Act and under any unexpired collective agreement revert to the individual employers represented by the employers' organization. R.S., c. 475, s. 101; 2010, c. 37, s. 156.

#### **Supply of employees during strike or lockout**

**102** No trade union or council of trade unions that has bargaining rights for employees of employers represented by an accredited employers' organization and no such employer or person acting on behalf of the employer, trade union or council of trade unions shall, so long as the accredited employers' organization continues to be entitled to represent the employers in a unit of employers, enter into any agreement or understanding, oral or written, that provides for the supply of employees during a legal strike or lockout, and if any such agreement or understanding is entered into it is void and no such trade union or council of trade unions or person shall supply such employees to the employers. R.S., c. 475, s. 102.

### NEGOTIATION

#### **Commencement of bargaining and mandatory vote bargaining**

**103 (1)** Where notice to commence collective bargaining has been given by a trade union, council of trade unions, employer or accredited employers' organization under this Part

(a) the certified bargaining agent and the employer or accredited employers' organization shall, without delay but in any case within five clear days after notice was given, or such further time as the parties may agree, meet and commence or cause authorized representatives to meet and commence to bargain collectively; and

(b) the employer shall not, without consent by the Board, increase or decrease rates of wages or alter any other term or condition of employment of employees in relation to whom notice to bargain has been given until

(i) a new collective agreement has been concluded,

(ii) ninety days have elapsed from the date of receipt of the notice to commence collective bargaining, in the case of the concluding of a first collective agreement between the parties, or

(iii) the day following the termination date of the collective agreement being renegotiated in the case of the renegotiation of an existing agreement.

(2) Sections 36 and 83 apply to any failure to comply with this Section as if it were a failure to comply with Section 35.

(3) Notwithstanding any provision of this Act or the regulations, before the commencement of a strike, but subsequent to the date on which the report of the conciliation officer was made to the Minister, a vote of the employees shall be taken as to the acceptance or rejection of the offer of the employer last received in conciliation by the trade union in respect of all matters remaining in dispute between the parties, and the union may include any additional proposals communicated to them by the employer prior to the taking of the vote.

(4) The taking of a vote, or the holding of a vote, pursuant to subsection (3) does not abridge or extend any time limits or periods provided for in this Act.

(5) A vote to ratify a proposed collective agreement taken by a trade union shall be by secret ballot.

(6) A vote to lockout or a vote to ratify a proposed collective agreement by an accredited employers' organization shall be by secret ballot.

(7) Notwithstanding any provision of this Act or the regulations, before the commencement of a lockout, but subsequent to the date on which the report of the conciliation officer was made to the Minister, a vote of the employers in the accredited employers' organization shall be taken as to the acceptance or rejection of the offer of the union last received in conciliation by the employers' organization in respect of all matters remaining in dispute between the parties and the employers may include any additional proposals communicated to them by the union prior to the taking of the vote.

(8) The taking of a vote, or the holding of a vote, pursuant to subsection (7) does not abridge or extend any time limits or periods provided for in this Act. R.S., c. 475, s. 103; 2010, c. 37, s. 157.

## CONCILIATION

### **Conciliation officer instructed to confer with parties**

**104** Where a notice to commence collective bargaining has been given under this Part and either party requests the Minister in writing to instruct a conciliation officer to confer with the parties thereto to assist them to make a collective agreement or a renewal or revision thereof, or in any other case in which, in the opinion of the Minister, it is advisable to do so, the Minister may instruct a conciliation officer to confer with the parties engaged in collective bargaining. R.S., c. 475, s. 104.

## STRIKES

**Restrictions on strike or lockout**

**105 (1)** No employee shall strike and no trade union or council of trade unions shall declare or authorize a strike of employees and the employer or employers' organization shall not declare or cause a lockout of employees until

(a) the trade union or council of trade unions is entitled on behalf of the employees by notice under this Act to require the employer to commence collective bargaining;

(b) a conciliation officer has been appointed and has failed to bring about an agreement between the parties and two days have elapsed from the date on which the report of the conciliation officer was made to the Minister;

(c) either

(i) ninety days have elapsed from the date of receipt of the notice to commence collective bargaining, in the case of bargaining for a first collective agreement between the parties to the dispute, or

(ii) the termination date of the collective agreement being renegotiated has passed, in the case of the renegotiation of an existing agreement; and

(d) in the case of a collective agreement falling within a sector for which there is an accredited employers' organization, the provisions of Section 106 have been complied with.

**(2)** No employee shall strike and no trade union or council of trade unions shall declare or authorize a strike of employees, and the employer or employers' organization shall not declare or cause a lockout of employees more than six months after the date upon which the times provided by clause (c) or (d) of subsection (1) expired, unless either party has thereafter requested conciliation services in accordance with Section 104 and ninety days have elapsed after the request.

**(3)** Notwithstanding anything contained in this Act,

(a) no person shall declare or authorize a strike and no employee shall strike until after a secret vote, conducted after the time provided in clause (b) of subsection (1), by ballot of employees in the unit affected as to whether to strike or not to strike has been taken and the majority of such employees have voted in favour of a strike; and

(b) no person shall declare or authorize a strike or lockout and no employee shall strike until forty-eight hours after receipt by the Minister of a notice of strike or lockout. R.S., c. 475, s. 105.

**Further restrictions on strike or lockout**

**106 (1)** Notwithstanding any provision of this Act but subject to subsection (2), no strike or lockout shall take place in a sector for which there is an accredited employers' organization unless,

(a) in the case of a strike,

(i) any three or more unions in the appropriate accredited unit vote for a strike and maintain a withdrawal of services, and

(ii) union members entitled to strike withdraw their services from all jobs then being worked in that sector; or

(b) in the case of a lockout,

(i) the accredited employers' organization votes to lockout any three or more unions in the appropriate accredited unit and maintain such lockout, and

(ii) employers entitled to lockout, lockout all union members affected from all jobs then being worked in that sector.

**(2)** Where collective agreements are reached with all except two or fewer unions, no strike or lockout shall be permitted except that any union which has not concluded a collective agreement may strike or remain on strike until a collective agreement is concluded or twenty-one days have elapsed from the date on which collective agreements have been concluded with all except two or fewer unions, whichever event first occurs.

**(3)** Where collective agreements have not been concluded and a return to work is required pursuant to subsection (2), the union or unions and the employers' organization shall within seven days of the return to work appoint a Construction Industry Conciliation Board, whose members are knowledgeable in the construction industry, consisting of one member appointed by the union or unions, one member appointed by the employers' organization and a third member, who shall be Chairman, appointed by the two members so appointed.

**(4)** Where either party fails to appoint a member, the Minister shall appoint a member to fill the vacancy.

**(5)** Where the two members of the Construction Industry Conciliation Board fail to agree on the appointment of a Chairman, the Minister shall appoint a Chairman.

**(6)** The Construction Industry Conciliation Board shall conduct a hearing and is empowered, in the absence of an agreement, to impose a binding settlement of all outstanding issues in all collective agreements which have not been concluded between the accredited employers' organization and the union or unions, such settlement to be consistent with settlements already concluded in the current



round of negotiations and with due consideration to historic relationships existing in the construction industry for that union or unions.

(7) Each of the parties to a conciliation pursuant to this Section shall pay the fees and expenses of the member appointed to the Construction Industry Conciliation Board by that party and each of the parties shall pay one half of the fees and expenses of the chairman of the Board. R.S., c. 475, s. 106; 2000, c. 4, s. 83.

#### ARBITRATION IN CONSTRUCTION INDUSTRY

##### **Arbitration required**

107 (1) Notwithstanding Sections 41 and 42 and any provision in a collective agreement, where an employer or an employers' organization enters a collective agreement, any dispute or difference between the parties to the collective agreement, including the persons bound by the collective agreement, relating to or involving

- (a) the interpretation, meaning, application or administration of the collective agreement or any provision of the collective agreement;
- (b) a violation or an allegation of a violation of the collective agreement;
- (c) working conditions; or
- (d) a question whether a matter is arbitrable,

shall be submitted for final settlement to arbitration in accordance with this Section in substitution for any arbitration or arbitration procedure provided for in the collective agreement.

(2) Where a dispute or difference arises between the parties to a collective agreement to which this Section applies during the period from the date of its termination to the date the requirements of Section 105 have been met, this Section applies to the settlement of the dispute or difference.

(3) When a dispute or difference arises which the parties are unable to resolve, the parties to the dispute or difference shall agree by midnight of the day on which the dispute or difference arises upon the appointment of a single arbitrator to arbitrate the dispute or difference.

(4) When one of the parties advises the Minister that a dispute or difference has arisen and that the parties to the dispute or difference have failed to comply with subsection (3), the Minister may appoint an arbitrator.

(5) Notwithstanding any provision of this Section, the Minister may, with the written consent of the employer and the trade union or unions representing the employees who are represented by a trade union, appoint a person to be the arbitrator for the purpose of this Section for the term of the collective agreement

or for the term mentioned in the appointment and the provisions of subsections (3) and (4) shall not apply.

(6) The arbitrator appointed pursuant to this Section has the powers conferred by Section 43 and, without restricting his power and authority, his decision shall be an order and may require

(a) compliance with the collective agreement in the manner stipulated;

(b) reinstatement of an employee in the case of a dismissal or suspension in lieu of dismissal with or without compensation.

(7) The decision of the arbitrator shall be rendered within forty-eight hours of the time of appointment unless an extension is agreed upon by the parties.

(8) The parties to the dispute or difference shall be bound by the decision of the arbitrator from the time the decision is rendered and shall abide by and carry out any requirement contained in the decision.

(9) An arbitrator appointed pursuant to this Section who renders a decision in respect of a dispute or difference shall transmit a copy of the written decision to the Minister and to the parties at the same time.

(10) The employer or the employers' organization and the trade union that are parties to the collective agreement shall each pay one half of the fees of, and the expenses incurred by, an arbitrator appointed pursuant to this Section. R.S., c. 475, s. 107; 2000, c. 4, s. 84.

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