

DEFEATED

Bill #30
Essential Home-support Services (2014) Act

CHANGES RECOMMENDED TO THE LAW AMENDMENTS COMMITTEE

PAGE 1, Preamble, third paragraph, lines 1 and 2 - delete "continue to be provided in the event of a work stoppage" and substitute "are not interrupted by a work stoppage".

PAGES 1 to 12, Clauses 2 to 31 - delete and substitute the following:

2 Chapter 475 of the Revised Statutes, 1989, the *Trade Union Act*, is amended by adding immediately after Section 107 the following Part:

PART III

HOME-SUPPORT SERVICES LABOUR RELATIONS

108 The purpose of this Part is to protect the health, safety and well-being of the public while preserving free and fair collective bargaining and the fair and impartial resolution of collective bargaining disputes respecting essential home-support services employees.

109 In this Part,

- (a) "CUPE" means the Canadian Union of Public Employees;"
- (b) "essential home-support services bargaining unit" means any of the following bargaining units:
 - (i) CUPE Local 3936,
 - (ii) CUPE Local 3953,
 - (iii) CUPE Local 4354,
 - (iv) NSGEU Local 29,
 - (v) NSGEU Local 30,
 - (vi) NSGEU Local 31,
 - (vii) NSGEU Local 32,
 - (viii) NSGEU Local 33,
 - (ix) NSGEU Local 34,
 - (x) NSGEU Local 35,
 - (xi) NSGEU Local 36,
 - (xii) NSGEU Local 37,
 - (xiii) NSGEU Local 38,
 - (xiv) NSGEU Local 39,

- (xv) NSGEU Local 40,
- (xvi) NSGEU Local 76,
- (xvii) NSGEU Local 83,
- (xviii) NSGEU Local 84,
- (xix) NSGEU Local 85,

and their successors;

(c) "essential home-support services employee" means a full-time or part-time employee who performs duties and functions that entitle that person to pay on a regular basis and who is a member of an essential home-support services bargaining unit but, for greater certainty, does not include a consultant or independent contractor;

(d) "NSGEU" means the Nova Scotia Government Employees Union.

110 (1) This Part applies to all essential home-support services bargaining units, all essential home-support services employees, their employers and the unions representing the employees.

(2) Except where inconsistent with this Part, Part I applies to all essential home-support services bargaining units, all essential home-support services employees, their employers and the unions representing the employees.

111 (1) Essential home-support services employees and their employers shall conduct interest arbitration as provided for in the regulations unless the parties mutually agree in writing to an alternative binding interest-arbitration process or unless a settlement is achieved through mediation pursuant to Section 115.

(2) An award reached pursuant to an alternative binding interest-arbitration process agreed to pursuant to subsection (1) is

(a) for the purpose of this Part an award of an arbitrator pursuant to this Part; and

(b) subject to the requirements prescribed by subsection 117(2).

112 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 arbitrator has made an award.

113 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 arbitrator for interest arbitration.

114 (1) Where a collective agreement is submitted to an arbitrator for interest arbitration pursuant to Section 113, the arbitrator shall be appointed in the manner prescribed by the regulations.

(2) The fees and expenses of the arbitrator shall be paid in the manner prescribed by the regulations.

115 (1) Before beginning the arbitration process, an arbitrator appointed pursuant to subsection 114(1) may seek to mediate a settlement between the parties and, upon the joint request of the parties or the request of the union, may conduct binding mediation.

(2) A settlement reached pursuant to subsection (1) is deemed to be for the purpose of this Part an award of the arbitrator.

(3) Where matters in dispute are not settled by mediation pursuant to subsection (1), the arbitrator shall decide the matters.

116 An interest arbitration conducted by an arbitrator appointed pursuant to subsection 114(1) shall be conducted in the manner prescribed by the regulations.

117 (1) As soon as possible after conducting a hearing into the matters referred to it, the arbitrator shall make an award and in its award deal with each item in dispute.

(2) For the purpose of ensuring that wages and benefits are fair and reasonable to the employees and employer and in the best interest of the public, the arbitrator

(a) shall consider, for the period with respect to which the award will apply,

(i) wages and benefits in private and public, and unionized and non-unionized, employment,

(ii) the continuity and stability of private and public employment, including

(A) employment levels and incidence of layoffs,

(B) incidence of employment at less than normal working hours, and

(C) opportunity for employment,

(iii) general economic conditions in the Province,

(iv) the extent to which services may have to be reduced in light of the award, if current funding is not increased, and

(v) the financial position of the employer; and

(b) may consider, for the period with respect to which the award will apply,

(i) the terms and conditions of employment in similar occupations outside the employer's employment taking into account any geographic, industrial or other variations that the board considers relevant,

(ii) the need to maintain appropriate relationships in terms and conditions of employment between different classification levels within an occupation and between occupations in the employer's employment,

(iii) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered, and

(iv) any other factor that the arbitrator considers relevant.

(3) The award of the arbitrator is deemed to include items settled by the parties but, for greater certainty, the arbitrator shall not deal with items settled by the parties.

(4) An award of an arbitrator is final and 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.

(5) Every award of an arbitrator must be signed by the arbitrator.

(6) An arbitrator retains jurisdiction over an arbitration after the decision, if it has issued an award, in order to clarify any ambiguities, uncertainties or omissions in that decision raised by any party to the proceedings.

118 Where an arbitrator renders an award, the arbitrator shall forward a copy of the decision to the parties and file a copy with the Department of Labour and Advanced Education.

119 (1) The right to strike of and the right to lock out essential home-support services employees is hereby replaced with the processes set out in this Part.

(2) Notwithstanding anything in this Act,

(a) no essential home-support services employee or member of an essential home-support services bargaining unit has the right to strike; and

(b) no employer shall lock out an essential home-support services employee or member of an essential home-support services bargaining unit.

120 (1) The Governor in Council may make regulations

(a) prescribing the manner in which an arbitrator is to be appointed to conduct interest arbitration under this Part;

(b) prescribing the manner in which the fees and expenses of an arbitrator are to be paid;

(c) prescribing the manner in which an interest arbitration under this Part is to be conducted;

(d) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Part.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*.

2 Part III of Chapter 475, as enacted by this Act, applies to collective bargaining between an essential home-support services bargaining unit as defined by that Part and an employer on and after the coming into force of this Act, whether the collective bargaining commenced before, on or after that day.
