



BILL NO. 19

Government Bill

*1st Session, 62nd General Assembly
Nova Scotia
62 Elizabeth II, 2013*

An Act to Amend Chapter 475 of the Revised Statutes, 1989, the Trade Union Act

CHAPTER 43
ACTS OF 2013

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
DECEMBER 12, 2013**

The Honourable Kelly Regan
Minister of Labour and Advanced Education

*Halifax, Nova Scotia
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**An Act to Amend Chapter 475
of the Revised Statutes, 1989,
the Trade Union Act**

Be it enacted by the Governor and Assembly as follows:

1 Subsection 38(3) of Chapter 475 of the Revised Statutes, 1989, the *Trade Union Act*, as enacted by Chapter 71 of the Acts of 2011, is amended by striking out “, after the expiry of ninety days and before the expiry of one hundred and twenty days from the day of the appointment,” in the ninth and tenth lines.

2 (1) Subsection 40A(1) of Chapter 475, as enacted by Chapter 71 of the Acts of 2011, is amended by

(a) striking out “, or one hundred and twenty days have expired since the appointment” in the third and fourth lines of clause (b);

(b) striking out clause (c); and

(c) striking out “settle the provisions of a first collective agreement between the parties” in the third last and second last lines and substituting “direct the settlement of the provisions of a first collective agreement between the parties by arbitration”.

(2) Subsections 40A(5) to (7) of Chapter 475 are repealed and the following subsections substituted:

(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.

(3) Subsection 40A(8) of Chapter 475, as enacted by Chapter 71 of the Acts of 2011, is amended by striking out “an application under subsection (1) is made” in the first and second lines and substituting “notice is served on the Board under subsection (2) or a direction is given under subsection (5)”.

(4) Section 40A of Chapter 475, as enacted by Chapter 71 of the Acts of 2011, is further amended by adding immediately after subsection (12) the following subsection:

(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.

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

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.

4 Section 93 of Chapter 475, as amended by Chapter 35 of the Acts of 1994, Chapter 61 of the Acts of 2005 and Chapter 71 of the Acts of 2011, is further amended by adding “, 40B” immediately after “40A” in the second line.
