

Civil Service Collective Bargaining Act

CHAPTER 71 OF THE REVISED STATUTES, 1989

as amended by

2007, c. 33; 2009, c. 29, ss. 4, 5; 2010, c. 37, ss. 26-43;
2011, c. 10, ss. 2-9; 2015, c. 6, s. 2



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Published by Authority of the Speaker of the House of Assembly
Halifax

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2011, c. 10, ss. 2-9; 2015, c. 6, s. 2

**An Act Respecting Collective Bargaining
in the Civil Service**

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(The table of contents is not part of the statute)

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Short title

1 This Act may be cited as the *Civil Service Collective Bargaining Act*.
R.S., c. 71, s. 1.

Interpretation

2 In this Act,

(a) "adjudication" means a procedure to determine a rights dispute;

(b) "arbitration" means a procedure to determine an interest dispute;

(ba) "arbitration board" means a one-person or three-person board established pursuant to this Act for purpose of determining an interest dispute;

(c) "bargaining unit" means those bargaining units listed in Schedule A to this Act and includes any bargaining units established pursuant to Section 12;

(d) "Board" means the Labour Board established by the *Labour Board Act*;

(e) "collective agreement" means an agreement in writing between the employer and the Union entered into pursuant to this Act;

(ea) "department" means any department, office, agency, board, commission, corporation or other entity where persons are employed pursuant to the *Civil Service Act*;

(f) "employee" means a person appointed pursuant to the *Civil Service Act* and who is not excluded from collective bargaining as provided by Section 11;

(g) "employer" means Her Majesty in right of the Province through the agency of the Civil Service Commission;

(h) "interest dispute" means a dispute to which Sections 13 to 32 apply and is a dispute arising between the employer and the employee as to the content of a collective agreement;

(i) "lockout" includes the closing of a place of employment, a suspension of work or a refusal by the Civil Service Commission on behalf of the Government of Nova Scotia to continue to employ a number of its employees done to compel the employees, or to aid another employer to compel its employees, to agree to terms or conditions of employment;

(ia) "Minister", for purpose of Sections 19, 20, 22 to 26, 28, 31, 34, 35 and 37A, means the Minister of Labour and Workforce Development;

(j) "rights dispute" means a dispute to which Sections 33 to 37 apply and is a dispute arising during the life of a collective agreement respecting the application, interpretation or alleged violation of the agreement;

(k) "strike" includes a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding for the purpose of compelling the Civil Service Commission 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;

(ka) "student" means a person enrolled in and returning to a course of studies at an educational institution;

(l) "Union" means the Nova Scotia Government Employees Union. R.S., c. 71, s. 2; 2007, c. 33, s. 1; 2010, c. 37, s. 26.

Labour Board

3 (1) The Board is 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 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 of the *Trade Union Act*,

and, when doing so, may exercise all the powers of the Board. 2010, c. 37, s. 27.

4 to 6 *repealed 2010, c. 37, s. 28.*

Orders and directives

7 (1) The Board may, for the purposes of this Act, make or issue such orders, notices, directives, declarations or other decisions as it considers necessary with or without conditions.

(2) If any order, directive or decision is made by the Board pursuant to this Act and such order, directive or decision is not complied with, the Board may, on the request of the Union, an employee or the employer, file a copy of the order, directive or decision with a prothonotary and upon such filing, the order, directive or decision shall become a decision of the Supreme Court and be enforceable as such. R.S., c. 71, s. 7.

8 and 9 *repealed 2010, c. 37, s. 28.*

Powers of Board

10 (1) The Board is empowered to decide for the purposes of this Act whether

(a) a person is an employee;

- (b) the parties to a dispute have settled the terms and conditions to be included in a collective agreement;
- (c) a collective agreement has been entered into;
- (d) a person is bound by a collective agreement;
- (e) a collective agreement is in effect;
- (f) a person practices his profession as a condition of employment;
- (g) there has been every reasonable effort to conclude a collective agreement;
- (h) there has been a violation of Section 40 or 41,

and the Board's decision is final and binding.

(2) If a question arises as to whether a person is or is not to be included in a bargaining unit or any other unit for collective bargaining which cannot be settled by the persons concerned, the question shall be referred to the Board and its decision is final and binding. R.S., c. 71, s. 10.

Restriction of term "employee"

11 (1) Notwithstanding clause (f) of Section 2, no person is an employee for the purpose of this Act who is

- (a) appointed by Governor in Council;
- (b) locally engaged outside the Province;
- (c) employed on a casual basis unless employed continuously for more than ten weeks or employed in the same department for more than a total of ten weeks in a twelve-month period;
- (d) employed on a seasonal basis unless employed for more than a total of ten weeks in a twelve-month period;
- (da) a student unless employed continuously in a bargaining-unit position for more than ten weeks or employed in a bargaining-unit position in the same department for more than a total of ten weeks in a twelve-month period; or
- (e) employed in a managerial or confidential capacity.

(2) For the purpose of this Act, a person is employed in a managerial or confidential capacity who

- (a) has or exercises managerial duties and responsibilities in relation to the formulation, development and administration of policies and programs;
- (b) spends a significant portion of his time in the supervision of employees;

(c) is primarily engaged in the administration of personnel policies or personnel programs;

(d) is required by reason of his duties to deal formally on behalf of the employer with a grievance presented in accordance with the grievance process;

(e) is employed in a position confidential to the Lieutenant Governor, a minister, the deputy head, chairman or chief executive officer of a government board, department, commission or agency, or the Executive Council;

(f) is a person employed in the Civil Service Commission, Department of Business, the Office of the Legislative Counsel or the Office of the Auditor General;

(g) is a member of the medical, dental or legal professions qualified to practise and employed in that capacity;

(h) is employed as an officer under the *Trade Union Act*;

(i) is a person employed in a position confidential to any person described in clause (c), (d) or (e);

(j) is not otherwise described but who in the opinion of the Board should not be included in a bargaining unit by reason of his duties and responsibilities to the employer. R.S., c. 71, s. 11; 2007, c. 33, s. 2; 2015, c. 6, s. 2.

Determination of bargaining unit

12 (1) The employer and the Union may determine by consultation which employees or classes of employees are in a bargaining unit.

(2) Such determination shall be made by the employer and the Union within thirty days immediately following any notice given by the employer to the Union or the Union to the employer for this purpose.

(3) If the employer and the Union are not able to agree upon the employees or classes of employees who are in a bargaining unit within thirty days from the date a notice is given pursuant to subsection (2), then such determination shall be made by the Board.

(4) Schedule A to this Act may be added to, varied or restricted as agreed upon by the employer and the Union where they are able to agree or as directed by the Board and evidenced by an order of the Governor in Council. R.S., c. 71, s. 12.

Collective agreement

13 (1) The Union and the employer may enter into negotiations to effect collective agreements on behalf of employees in a bargaining unit.

(2) Notwithstanding subsection (1), where there is a conflict between this Act and the *Civil Service Act*, the *Civil Service Act* prevails unless the conflict is between this Act and clauses (d), (f), (h), (i), (k), (l), (m), (n) or (p) of subsection (1) of Section 45, Sections 26 to 28 or Sections 32 to 34 of the *Civil Service Act*, in which case, the provisions of this Act prevail.

(3) *repealed 2010, c. 37, s. 28.*

R.S., c. 71, s. 13; 2010, c. 37, s. 28.

Collective agreement binding

14 A collective agreement entered into by the employer and the Union is, subject to and for the purposes of this Act, binding upon

- (a) the Union and every employee represented by the Union on whose behalf the agreement has been entered into; and
- (b) the employer. R.S., c. 71, s. 14.

Implementation

15 Subject to subsection (2) of Section 32, the provisions of a collective agreement shall be implemented by the Union and the employer,

- (a) where a period within which the collective agreement is to be implemented is specified in the collective agreement, within that period; and
- (b) where no period for the implementation is so specified, within a period of ninety days from the date of its execution. R.S., c. 71, s. 15.

Effective date and term of agreement

16 (1) A collective agreement has effect in respect of the employees covered by it on and from

- (a) where an effective date is specified, that day; and
- (b) where no effective date is specified, the first day of the first full bi-weekly pay period next following the date on which the agreement is executed.

(2) The Union and the employer shall not enter into a collective agreement having a specified term of less than one year and shall not amend an agreement so as to produce a term of less than one year.

(3) Where a collective agreement contains no provision as to its term it shall be deemed to be for a term of one year from the day on and from which it has effect pursuant to subsection (1). R.S., c. 71, s. 16.

New agreement

17 Where the employer and the Union are parties to a collective agreement, either one of them may, within a period of three months next preceding the

date of the 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. 71, s. 17.

Notice to commence bargaining

18 Where a notice to commence collective bargaining has been given, either under this Act or in accordance with a collective agreement which provides for a revision of a provision of the agreement, the employer and the Union shall, without delay, and in any case within twenty clear days after notice has been 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. R.S., c. 71, s. 18.

Conciliation officer

19 Where a notice to commence collective bargaining has been given 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 Union and the employer. R.S., c. 71, s. 19; 2010, c. 37, s. 29.

Report to Minister

20 (1) Where a conciliation officer has been instructed to confer with the Union and the employer engaged in collective bargaining or in any dispute, the conciliation officer 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 Union and the employer have agreed;

(b) the matters, if any, upon which the Union and the employer 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) the conciliation officer shall forthwith advise the Union and the employer to the dispute that he has made a report. R.S., c. 71, s. 20; 2010, c. 37, s. 30.

Exemption from requirement to give evidence

21 (1) Notwithstanding any other enactment or law, a conciliation officer 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 adjudicator, mediator-adjudicator or member of an adjudication 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. 71, s. 21; 2009, c. 29, s. 4.

Request for arbitration board

22 (1) Where the employer and the Union have bargained collectively with a view to concluding a collective agreement but have failed to reach agreement, the employer or the bargaining agent or both shall refer those terms and conditions of employment that are in dispute to the Board and request that an arbitration board, composed of three persons unless the parties agree to submit the collective agreement to an arbitration board of one person, be established to resolve those terms and conditions.

(2) A request by either or both of the parties under subsection (1) shall

(a) if it is made by the employer, be accompanied by a list of the items it claims are in dispute and that the employer wishes to be referred to arbitration at that time;

(b) if it is made by the bargaining agent, be accompanied by a list of the items it claims are in dispute and that the bargaining agent wishes to be referred to arbitration at that time; or

(c) if it is made jointly, be accompanied by a list of the items that each party claims are in dispute and that each wish to be referred to arbitration at that time.

(3) Upon receipt of a request by either party under subsection (1), the Board shall, as soon as possible, send a copy of the request and the list of items that are claimed to be in dispute, to the other party.

(4) The party receiving the copy of the request for the appointment of an arbitration board shall, within ten days of receipt of the copy, send its list

of items it wishes to be referred to arbitration to the Board and send a copy of it to the other party to the dispute. R.S., c. 71, s. 22; 2010, c. 37, s. 31; 2011, c. 10, s. 2.

Power to establish arbitration board

23 (1) Where a request for the establishment of an arbitration board is made by either the employer or the bargaining agent, the Board may

(a) if it is satisfied that the parties to the dispute have failed to make reasonable efforts to conclude a collective agreement, direct the parties to continue collective bargaining; or

(b) if it is satisfied that

(i) there are terms and conditions of employment that are in dispute,

(ii) the terms and conditions of employment in dispute can satisfactorily be considered together,

(iii) it is an appropriate time to refer the matter to an arbitration board, and

(iv) the dispute is a proper one to refer to an arbitration board,

it may establish an arbitration board.

(2) Where a request for the establishment of an arbitration board is made by the employer and the bargaining agent jointly, the Board may, if it is satisfied with respect to the matters referred to in clause (b) of subsection (1), establish an arbitration board. R.S., c. 71, s. 23; 2010, c. 37, s. 32; 2011, c. 10, s. 3.

Appointment of members of arbitration board

24 (1) Where the Board agrees to establish an arbitration board, it shall notify the parties to the dispute in writing accordingly and require each party, within ten days, to

(a) where the arbitration board is to be comprised of one person, attempt to agree upon a person satisfactory to both parties to be the arbitration board and, where agreement is reached, give the Board the name of the person; or

(b) where the arbitration board is to be comprised of three persons, give the Board and the other party the name of a person to act as its nominee on the arbitration board.

(1A) Where agreement is reached pursuant to clause (1)(a), the person agreed upon is appointed as the arbitration board and is the chair of the arbitration board.

(2) The two persons appointed pursuant to subsection 24(1)(b) to act as members of an arbitration board shall appoint a third person to act as a mem-

ber and chair of the arbitration board within ten days of the date the second person is appointed. R.S., c. 71, s. 24; 2010, c. 37, s. 33.

Failure to appoint

25 (1) Where the parties are unable to agree upon a person to be the arbitration board, pursuant to clause 24(1)(a), either or both parties may apply to the Board to appoint a person to be the arbitration board and the Board shall appoint such a person and that person is the chair of the arbitration board.

(1A) If the employer or the bargaining agent fails to appoint a person as a member of an arbitration board pursuant to clause 24(1)(b), the Board shall appoint a person to act as a member on its or their behalf.

(2) Where the two persons appointed as members of an arbitration board pursuant to clause 24(1)(b); fail to appoint a person to act as a member and chair of the arbitration board, the Board shall appoint a person to act as a member and chair of the arbitration board on their behalf. R.S., c. 71, s. 25; 2010, c. 37, s. 34.

Establishment of arbitration board and arbitral items

26 (1) Where a person or persons have been appointed to act as a member of an arbitration board, the Board, by notice in writing to the chair of the arbitration board, shall

- (a) establish the member or members as an arbitration board; and
- (b) list the items in dispute to be resolved by the arbitration board.

(2) An arbitration board remains constituted until it is dissolved by the Board by notice in writing to the chair of the arbitration board.

(3) No person shall be appointed a member of a board who has any direct pecuniary interest in the matters coming before it or who is acting or has, within a period of six months immediately preceding the date of his appointment, acted as a solicitor, counsel or agent of either of the parties.

(4) Where a member appointed to a three-person arbitration board under Section 24 or 25 ceases to act by reason of resignation, death or otherwise before the board has completed its work, the party whose point of view the member represented shall, within ten days of the member so ceasing to act, appoint a replacement and notify in writing the other party and the Board of the name and address of the replacement, and where the party fails to so appoint a replacement or to notify the Board, the Board shall appoint as a replacement such person as the Board considers suitable and the board of arbitration shall continue to function as if the replacement member were a member of the board from the beginning.

(5) Where the chair of an arbitration board is unable to enter on or to carry on his duties so as to enable the board to render a decision within a reason-

able time after its establishment, the Board shall appoint a person to act as chair of the arbitration board in his place and the arbitration shall begin *de novo*. R.S., c. 71, s. 26; 2010, c. 37, s. 35; 2011, c. 10, s. 4.

Award

27 (1) As soon as possible after making an inquiry into the items in dispute referred to it, the arbitration board shall make an award and in its award deal with each item in dispute.

(2) The award of the arbitration board may be retroactive in whole or in part. R.S., c. 71, s. 27; 2011, c. 10, s. 5.

Notification of award

28 (1) Upon making an award the arbitration board shall

(a) file a copy of it with the Board; and

(b) serve a copy of it on the employer and the bargaining agent in person or by registered mail.

(2) The Board may in any manner publish an award of an arbitration board. R.S., c. 71, s. 28; 2011, c. 10, s. 6.

Award binding

29 (1) An award of an arbitration board is binding upon

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

(b) the employer,

and the employer and the bargaining agent shall give effect to it.

(2) Subject to subsections (5) and (6) of Section 31, the terms of an award of an arbitration board relating to entering into, renewing or revising a collective agreement shall be included in a collective agreement. R.S., c. 71, s. 29; 2011, c. 10, s. 7.

Arbitration procedure

30 (1) Arbitration shall be conducted by an arbitration board appointed pursuant to this Act which board shall determine its own procedure but shall give full opportunity to the Union and the employer to present evidence and make submissions to it.

(2) An arbitration board established pursuant to this Act has, in relation to any proceedings before the arbitration board, the powers conferred on the Board, in relation to any proceedings before the Board, by the *Labour Board Act*, and the parties to the proceedings may

- (a) appear and be heard and be represented by counsel;
and
- (b) call witnesses and examine or cross-examine all witnesses. R.S., c. 71, s. 30; 2010, c. 37, s. 36.

Jurisdiction and remuneration of board

31 (1) The arbitration board has the jurisdiction to determine and render a decision only in respect of those matters referred to it by the Board.

(2) In the conduct of proceedings before it and in rendering a decision, the arbitration board may consider any factor that to it appears to be relevant to the matter in dispute including

- (a) the needs of the Province and its agencies for qualified employees;
- (b) where the employment is comparable or similar employment to that found in both the public and private sectors in the Province, the conditions of employment in the public and private sectors in the Province;
- (c) the desirability to maintain appropriate relationships in the conditions of employment as between classifications in the civil service;
- (d) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, work performed, the responsibility assumed and nature of services rendered; and
- (e) the interests of the public.

(3) Where a one-person arbitration board has been appointed pursuant to this Act, the decision of the chair of the arbitration board is the decision of the arbitration board and, where a three-person arbitration board has been appointed pursuant to this Act, the decision of the majority of the members of the arbitration board is the decision of the board but, where there is no majority, the decision of the chair of the arbitration board is the decision of the board.

(4) Every award of the arbitration board shall be signed by the chair of the arbitration board.

(5) The Board may, upon application by either party to an award of an arbitration board, within ten days after the release of the award, give the parties an opportunity to make representations thereon to the Board and amend the award where it is shown to the satisfaction of the Board that the arbitration board has failed to deal with any matter in dispute referred to the arbitration board or that an error is apparent on the face of the award.

(6) Notwithstanding that an arbitration board has rendered an award, such award shall be of no force and effect if the employer and the Union enter into a collective agreement concerning the subject matter of the award within seven days from the time the award was rendered.

(7) The cost of the arbitration board must be apportioned as follows:

(a) where a three-person arbitration board has been established,

(i) the Union shall pay the remuneration and expenses of the member appointed by it pursuant to Section 24,

(ii) the employer shall pay the remuneration and expenses of the member appointed by it pursuant to Section 24, and

(iii) the employer and the Union shall share equally the remuneration and expenses of the chair of the arbitration board appointed pursuant to Section 24 or 25, such remuneration and expenses to be determined by the Board; or

(b) where a one-person arbitration board has been established, the employer and the Union shall each pay one half of the remuneration and expenses of the arbitration board. R.S., c. 71, s. 31; 2010, c. 37, s. 37; 2011, c. 10, s. 8.

Restriction on collective agreement and award

32 (1) No collective agreement or award of an arbitration board shall contain any provision which would require either directly or indirectly for its implementation the enactment or amendment of legislation.

(2) The Governor in Council and the Civil Service Commission are not bound to implement any award of an arbitration board which would result in any department exceeding its appropriation provided that the Minister of Finance will include in the estimates for the next ending fiscal year an amount sufficient to implement the award retroactive to the date on which the award was to be effective. R.S., c. 71, s. 32; 2011, c. 10, s. 9.

Final settlement provision and grievance referred to adjudication

33 (1) Every collective agreement shall contain a provision for final settlement without stoppage of work, by adjudication 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.

(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 or application of this agreement, including any question as to whether or not a matter is adjudicable within the meaning of subsection (4) of Section 33 of the Civil Service Collective Bargaining Act, 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 adjudication.

(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.

(4) Where a collective agreement provides for a grievance procedure and the employer, the Union or an employee entitled under the collective agreement to present a grievance has presented a grievance up to and including the final level in the grievance process with respect to

(a) the interpretation or application in respect of the employer, the Union or an employee of a provision of a collective agreement; or

(b) disciplinary action resulting in discharge, suspension or a financial penalty,

and the grievance has not been dealt with to the satisfaction of the employer, the Union or an employee, then the employer, the Union or an employee affected may, subject to subsection (5), refer the grievance to adjudication.

(5) Where a grievance within the meaning of subsection (4) is presented, the employee is not entitled to refer the grievance to adjudication unless the Union signifies in prescribed manner

(a) its approval of the reference of the grievance to adjudication; and

(b) its willingness to represent the employee in the adjudication proceedings. R.S., c. 71, s. 33.

Method of Adjudication

34 (1) Where a grievance is referred to adjudication, it shall be dealt with by either a single adjudicator or a board of adjudication.

(2) Where the employer and the Union are agreed that a matter should be referred to a single adjudicator and they are able to agree upon the adjudicator, then such adjudicator shall be appointed by the Minister.

(3) Where the employer and the Union are agreed that a matter should be referred to a single adjudicator but are unable to agree to the adjudicator within five days after a grievance is referred to adjudication, then the single adjudicator shall be appointed by the Minister.

(4) Where the employer and the Union are unable to agree that a matter should be dealt with by a single adjudicator within five days after a grievance is referred to adjudication, then it shall be dealt with by a board of adjudication. R.S., c. 71, s. 34; 2010, c. 37, s. 38.

Adjudication board and remuneration and expenses

35 (1) When an adjudication board is required the Minister shall appoint a board which shall be composed of

- (a) one member nominated by the Union;
- (b) one member nominated by the employer; and
- (c) a chair appointed pursuant to subsection (2) or (3),

all of whom shall hold office until the matter referred to the adjudication board is decided by it.

(2) The two members appointed pursuant to subsection (1) 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 chair of the adjudication board and the Minister shall forthwith appoint that person to be a member and chair of the adjudication board.

(3) If the two members appointed under subsection (1) fail or neglect to make a nomination within five days after their appointment the Minister shall forthwith appoint the third member.

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

(5) Where there is an adjudication board, the decision of the majority of the adjudication board is the decision of the board but if there is no majority, the decision of the chair of the adjudication board is the decision of the board.

(6) Every decision of an adjudicator shall be signed by the adjudicator and in the case of an adjudication board, signed by the chair of the adjudication board and shall be transmitted to the employer and the Union within thirty days of the last day of the hearing or such longer period as is agreed to by the parties.

(7) The costs of an adjudicator shall be shared equally by the employer and the Union and the costs of the adjudication board shall be apportioned as follows:

- (a) the Union shall pay the remuneration and expenses of the member appointed pursuant to clause (a) of subsection (1);
- (b) the employer shall pay the remuneration and expenses of the member appointed pursuant to clause (b) of subsection (1);

(c) the employer and the Union shall share equally the remuneration and expenses of the chairman appointed pursuant to clause (c) of subsection (1) or subsection (2), which remuneration and expenses shall be determined by the Board. R.S., c. 71, s. 35; 2010, c. 37, s. 39.

Restrictions on grievances

36 (1) No grievance shall be referred to adjudication and no adjudicator or adjudication board shall hear or render a decision on a grievance until all procedures established for the presenting of the grievance up to and including the final level in the grievance process have been complied with.

(2) No adjudicator or adjudication board shall, in respect of any grievance, render any decision thereof the effect of which would be to require the amendment of a collective agreement. R.S., c. 71, s. 36.

Grievance referred to adjudication

37 (1) Where a grievance is referred to adjudication, the adjudicator or adjudication board shall give both parties to the grievance an opportunity to be heard.

(2) Where a decision on any grievance referred to adjudication requires any action by or on the part of the employer, the employer shall take such action.

(3) Where a decision on any grievance requires any action by or on the part of the employee or the Union or both of them, the employee or the Union, or both, as the case may be, shall take such action.

(4) Where an adjudicator or an adjudication board determines that an employee has been discharged or disciplined by the employer for cause and the collective agreement does not contain a specific penalty for the infraction that is the subject of the adjudication, the adjudicator or the adjudication board has power to substitute for the discharge or discipline any other penalty that to the adjudicator or the adjudication board seems just and reasonable in the circumstances. R.S., c. 71, s. 37.

Mediator-adjudicator

37A (1) Notwithstanding any grievance or adjudication provision contained in a collective agreement or deemed to be contained in a collective agreement under subsection (2) of Section 33, the parties to a collective agreement may, at any time, agree to refer one or more grievances to a mediator-adjudicator 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-adjudicator but are unable to agree upon one, the Minister shall appoint a mediator-adjudicator upon the request of the parties.

(3) A mediator-adjudicator 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-adjudicator shall attempt to assist the parties to agree upon the material facts in the dispute and shall then determine the grievance by adjudication.

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

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

(7) Section 37 applies *mutatis mutandis* to a mediator-adjudicator and a settlement or decision under this Section. 2009, c. 29, s. 5; 2010, c. 37, s. 40.

Lockout or strike

38 (1) The employer shall not cause a lockout and an employee shall not strike.

(2) 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. 71, s. 38.

No sanction of strike

39 The Union shall not sanction, encourage, or support, financially or otherwise, a strike by its members or any of them who are governed by the provisions of this Act. R.S., c. 71, s. 39.

Unfair labour practice by employer

40 The employer or a person acting on behalf of the employer shall not

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

(i) is a member of the Union or is an applicant for membership in the Union,

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

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

(iv) has made an application or filed a complaint 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) 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 the Union. R.S., c. 71, s. 40.

Unfair labour practice by Union

41 The Union or a person acting on behalf of the Union shall not

(a) 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 the Union;

(b) use coercion or intimidation of any kind with respect to any employee with a view to encouraging or discouraging membership or activity in the Union;

(c) discriminate against a person in regard to employment or membership in the 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 authorized or permitted under a collective agreement or 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 authorized or permitted under a collective agreement or a proceeding under this Act, or

(iii) has made an application or filed a complaint under this Act. R.S., c. 71, s. 41.

Offences

42 (1) An employee who contravenes this Act or fails to do anything required of an employee by this Act is guilty of an offence and liable upon summary conviction to a fine of not more than one hundred dollars for each day during which the contravention or failure occurs or continues.

(2) Every person acting on behalf of the 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.

(3) If the Union declares or authorizes a strike contrary to this Act, it 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 the Union who 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. R.S., c. 71, s. 42.

Existing collective agreement

43 *repealed 2010, c. 37, s. 41.*

Question of law

44 (1) *repealed 2010, c. 37, s. 42.*

(2) An arbitration board, adjudicator or an adjudication board may, of its own motion or upon application of the employer or the Union, state a case in writing for the opinion of the Appeal Division of the Supreme Court upon any question which is a question of law.

(3) A like reference to that contained in subsection (2) may also be made by the Board.

(4) The Nova Scotia Court of Appeal shall hear and determine questions of law arising as a result of a stated case taken pursuant to subsection (2) or (3) and remit the matter to the arbitration board, the adjudicator, the adjudication board or the Board, whichever is appropriate under the circumstances, with the opinion of the Court thereon. R.S., c. 71, s. 44; 2010, c. 37, s. 42.

Act binds Crown

45 This Act is binding upon the Crown. R.S., c. 71, s. 45.

SCHEDULE A

BARGAINING UNITS

All the employees of the employer in the following Classification and Pay Plans:

- | | | | |
|----|--|---|-----------|
| 1. | Health Services Classification and Pay Plan | - | (HSA) |
| 2. | Health Services Classification and Pay Plans | - | (HSB) |
| 3. | Educational Classification and Pay Plans | - | (EDA-EDB) |
| 4. | Institutional and Domestic Services Classification and Pay Plan | - | (SE) |
| 5. | Maintenance and Operational Services Classification and Pay Plan | - | (MOS) |
| 6. | Technical Classification and Pay Plan | - | (TE) |
| 7. | Professional-Administrative Classification and Pay Plans | - | (PR-AD) |

20

civil service collective bargaining

R.S., c. 71

8. Clerical and Related Classification
and Pay Plan - (CL)

R.S., c. 71, Sch. A.

Schedule B *repealed 2010, c. 37, s. 43.*
