

Employment Bulletin



Bill 139 - Labour Relations Amendment Act, 2000

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Bill 139 received Royal Assent on December 21, 2000. All sections of the Act except section 37 were proclaimed in force on December 30, 2000. The Bill contains a significant number of amendments to the Labour Relations Act, 1995. The following summarizes some of the more significant amendments:

APPLICATIONS FOR CERTIFICATION

The period of time during which a trade union can apply to displace another trade union by way of certification has been extended to the last three months of the collective agreement. If the collective agreement is for more than three years, another union can apply for certification in months 34, 35 and 36 of the operation of the agreement and thereafter, during the last three months of each successive year of the agreement, as well as during the final three months of the agreement.

BARS TO CERTIFICATION

The Act now provides that if a trade union withdraws its application for certification before a representation vote is conducted, and that trade union had within the preceding six months withdrawn another application before a vote was taken, the Ontario Labour Relations Board ("the Board") will not consider an application by any trade union for certification of any of the employees in the bargaining unit covered by the original application, for a period of 12 months from the date of withdrawal of the second application. There are two exceptions to this rule, including situations where there has been employer support or discrimination with respect to the application.

In the event that a union withdraws its application for certification after the representation vote is conducted, the Board will not consider another application by any trade union as bargaining agent of an employee in a bargaining unit that was proposed in the original application, unless the same exceptions apply.

The Bill will also apply if the application for certification is dismissed after a vote is conducted.

FIRST CONTRACT ARBITRATION

The Board must now deal with a de-certification application or displacement application before proceeding with any application for first contract arbitration. Only if the de-certification application or displacement application is dismissed is the Board authorized to proceed to deal with the application for first contract arbitration.

RATIFICATION VOTE/STRIKE VOTE

The new Act changes the form of ballot that can be used in a ratification vote so that there can be no question on the ballot with respect to a strike. Employees must be limited to a choice between ratifying the agreement and not ratifying the agreement. Similarly, a ballot used for a strike vote cannot make reference to ratification of a collective agreement.

TERMINATION OF BARGAINING RIGHTS

The period of time in which employees can bring an application to terminate a union's bargaining rights has now been extended to correspond with the period of time in which another trade union can apply for certification as bargaining agent of the same employees.

To assist employees in bringing an application for termination of bargaining rights, the Act now provides that within one year after the Act receives Royal Assent, the Minister of Labour must prepare and publish a document describing the process for making a de-certification application. Employers must post this notice in every work place and they must provide employees with a copy of this notice at least once per year.

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INFORMATION

The Act now requires each trade union to provide a written statement to the Minister of Labour by April 1 of the following year in which it sets out the amount of salary and benefits that it paid in the previous year and identifies every employee to whom it paid a salary and benefits totalling \$100,000.00 or more.

ADMINISTRATION

All unfair labour practice complaints alleging a breach of the duty of fair referral will now be heard by a single Chair or Vice-Chair of the Board.

In addition, any party can apply to the Chair of the Board to terminate a proceeding if at least six months has passed since the last day of hearing, and the Board has still not made a ruling. The Chair has the discretion to terminate the proceeding on such terms and conditions as it considers appropriate. However, if the proceeding is re-instituted, it must be before different members of the Board than those who heard the original application.

CONSTRUCTION

The definition of a “non-construction employer” has been changed to include an employer who does no work in the construction industry for which it expects compensation from an unrelated person.

Employees covered by a collective agreement in the construction industry can apply for a declaration that the trade union no longer represents them after the 275th day of the operation of a collective agreement, and before the 365th day of operation.

The provisions with respect to project agreements have been amended to permit more than one project to be covered by a project agreement. If the agreement covers more than one project, the project agreement must contain a provision that the agreement will remain in effect until every

project covered under the agreement is completed or abandoned. It may also contain a term providing that additional projects may be added to the project agreement.

The Act now allows for regulations which may designate projects in the construction industry as projects that may be the subject of a project agreement.

A new procedure has been added whereby a party may add a project to a project agreement. If the parties cannot agree on the addition of a project, the Board has the jurisdiction to determine whether the additional project should be added. The Act states that the Board will not make an order adding the new project if the project agreement does not contain the term that additional projects may be added or if the proper notice was not given.

SECTOR DETERMINATION

The Board still has the authority to make sector determinations. However, the Board is no longer required to hold a hearing to make this determination. Representatives of both the trade union and the employer or employer's organization are now required to meet promptly and attempt to settle the matters raised in the application and report the outcome to the Board. The Board has been given the authority to make interim orders in these proceedings and to order any party to take certain actions or cease and desist from actions.

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