

TIMELINESS OF APPLICATION*	APPROPRIATE BARGAINING UNIT	REPRESENTATION VOTE	DECERTIFICATION
<p><u>No certified trade union, no collective agreement</u></p> <p>At any time. s.7(1)</p> <p><u>Certified trade union but no agreement</u></p> <p>12 months after date of certification. s.7(2)</p> <p><u>Voluntarily recognized trade union but no agreement after recognition</u></p> <p>Where the bargaining rights have not been terminated, 12 months after the voluntary recognition occurred. s.7(3)</p> <p><u>Agreement in force (3 years or less)</u></p> <p>After the commencement of the last 3 months of its operation. s.7(4)</p> <p><u>Agreement in force (more than 3 years)</u></p> <p>During the 34th, 35th and 36th months of operation, during the last 3 months of each year that the agreement continues to operate, or after the commencement of the last 3 months of operation. s.7(5)</p> <p><u>Agreement in force (automatic renewal for further term(s))</u></p> <p>During the last 3 months of each year of the further term(s) or after the commencement of the last 3 months of the operation of the agreement. s.7(6)</p> <p><u>In all cases</u></p> <p>Application is subject to delays related to conciliation, mediation, strike, or lockout. s.67</p>	<p>"Bargaining unit" means a unit of employees appropriate for collective bargaining, whether it is an employer unit or a plant unit or a subdivision of either of them. s.1(1)</p> <p>The term "employee" includes a dependent contractor as defined in the Act. Dependent contractors can therefore be included in a unit. s.1(1)</p> <p>The Board** determines the appropriateness of units, and a unit must consist of more than one employee. s.9(1)</p> <p>A group of employees who exercise technical skills or who are members of a craft and, as such, are distinguishable from other employees is considered by the Board to be a unit appropriate for collective bargaining if certain conditions are met. Persons commonly associated in their work and bargaining may be included in the unit. s.9(3)</p> <p>A bargaining unit consisting solely of professional engineers or dependent contractors is considered to be appropriate but, if a majority so wish, the Board may include these engineers or dependent contractors in a unit with other employees. s.9(4),(5)</p> <p>Unless the employer notifies the Board that it objects, a bargaining unit may include security guards and other employees. If there is an objection, the trade union must satisfy the Board that no conflict of interest exists. (Similar provisions apply to situations where a trade union (or an organization to which it is affiliated) admits to membership security guards and other employees.) s.14</p>	<p>An application for certification must be accompanied by a list of the names of the union members in the proposed bargaining unit and evidence of their status as union members. s.7(13)</p> <p>Evidence of membership means written and signed evidence (including the date of the signature) that an employee is a member of a trade union, has applied to become a member or has otherwise expressed a desire to be represented by a union. Labour Relations Board Rules of Procedure. ss.1, 43s</p> <p>Upon receiving an application, the Board may determine the voting constituency to be used for a representation vote and in doing so must take into account the bargaining unit proposed in the application and the one, if any, proposed by the employer. s.8(1)</p> <p>If the Board determines that 40% or more of the individuals in the bargaining unit proposed in the application appear to be members of the union at the time of the filing of the application, it must direct that a representation vote be taken among those in the voting constituency. s.8(2)</p> <p>Unless the Board directs otherwise, a vote by secret ballot must be held within five days (excluding weekends and holidays) after the date on which the application is filed. s.8(5),(6)</p> <p>When disposing of an application for certification, the Board may not consider any challenge to the list of the names of the union members in the proposed bargaining unit and evidence of their status as union members. s.8(9)</p>	<p><u>Timeliness of application</u></p> <p>Same periods as specified for certification when there is no collective agreement or an agreement is in force. The application is subject to delays related to conciliation, mediation, strike or lockout. s.63(1),(2)</p> <p>The Board may bar a new application by any of the employees affected by an unsuccessful application for a period not exceeding one year. s.111(2)(k)</p> <p><u>Criteria</u></p> <p>An application for decertification must be accompanied by a list of the names of the employees in a bargaining unit who have expressed a desire not to be represented by the trade union and evidence of those wishes. s.63(4)</p> <p>Upon an application by any of the employees, if the Board ascertains that not less than 40% of the employees in the bargaining unit appear to have expressed a wish not to be represented by the trade union at the time the application was filed, it must order a representation vote. s.63(5)</p> <p>Unless the Board directs otherwise, a vote by secret ballot must be held within five days (excluding weekends and holidays) after the date on which the application is filed. s.63(9),(10)</p>

* After notification of an application for certification, the employer concerned may not alter the rates of wages, any other term or condition of employment or any right, privilege or duty of employees affected until the trade union has given notice to commence bargaining or the application for certification has been withdrawn by the trade union or refused by the Board. However, changes may be made with the consent of the trade union. s.86(2)

** The term "Board" means the Ontario Labour Relations Board.

CERTIFICATION OF TRADE UNIONS *(continued)*

Ontario

TIMELINESS OF APPLICATION	REPRESENTATION VOTE	DECERTIFICATION
<p><u>Where application withdrawn before a representation vote</u></p> <p>The Board may bar another application by the trade union for a period not exceeding one year. s.7(9)</p> <p><u>Where application withdrawn before a representation vote twice in a six-month period or following such a vote</u></p> <p>The Board must bar for one year another application by any trade union with respect to a bargaining unit containing any of the same employee positions. This does not apply when an application is withdrawn by a trade union that cannot be certified because it is dominated by an employer or discriminates unlawfully against any person. s.7(9.1) to (10.2)</p> <p><u>Where application dismissed by the Board</u></p> <p>The Board must bar for one year another application by any trade union with respect to a bargaining unit containing any of the same employee positions. This does not apply when the trade union whose application was dismissed cannot be certified because it is dominated by an employer or discriminates unlawfully against any person. s.10(3) to (3.2)</p> <p><u>Where application dismissed by the Board because of a contravention of the Act</u></p> <p>The Board must bar for one year another application by a contravening trade union with respect to a bargaining unit containing any of the same employee positions. s.11.1(4),(5)</p> <p><u>Where application refused</u></p> <p>The Board may bar an unsuccessful applicant for a period not exceeding one year. s.11(2)(k)</p> <p><u>First collective agreement</u></p> <p>When the Board has ordered the settlement of a first collective agreement by arbitration, no application may be considered until after the agreement is settled (timeliness is the same as if there was a negotiated agreement). s.43(25)</p>	<p>Within two working days following the receipt of the application for certification, the employer may, if it disagrees with a trade union's estimate of the number of individuals in the proposed bargaining unit, submit its own estimate or propose a different unit, and the Board must then direct that the ballot boxes from the representation vote be sealed unless the union and the employer agree otherwise. If the Board determines that the unit proposed by the union could be appropriate, it must first determine the number of individuals in that unit. If the Board determines that the unit proposed by the union could not be appropriate, it must first determine the appropriate bargaining unit and then determine the number of individuals in that unit. After those determinations, the Board must ascertain whether the 40% minimum membership requirement for a representation vote has been met. If it has been, the ballots from the representation vote are counted. If it has not been, the application is dismissed and, if the ballot boxes were sealed, the ballots are destroyed. s.8.1</p> <p>Where the Board is satisfied that any dispute as to the composition of the bargaining unit cannot affect a trade union's right to certification, it may grant certification pending the final resolution of the dispute. s.9(2)</p> <p>The Board must certify a trade union if more than 50% of the ballots taken in a vote are cast in its favour. s.10(1)</p> <p>When a trade union was not able to demonstrate support from at least 40% of the employees in the proposed bargaining unit, or a representation vote did not likely reflect the employees' true wishes, on application by the union, the Board may order a representation vote or another such vote, or may certify the union if no other remedy would be sufficient to counter the effects of a contravention of the Act by the employer. s.11</p> <p>The Board has the power to give such directions in connection with representation votes as it considers necessary. The Board may also hold additional representation votes to determine employees' wishes. ss. 111(2),(5)</p>	<p>When disposing of an application for decertification, the Board may not consider any challenge to the information accompanying the application. s.63(13)</p> <p>The Board may dismiss an application for decertification if it is satisfied that the employer or its representative initiated the application or engaged in threats, coercion or intimidation in connection with it. s.63(16)</p> <p>Decertification takes place when more than 50% of the ballots are cast in opposition to the trade union. s.63(14)</p> <p>A certificate obtained by fraud may be revoked at any time by a declaration of the Board. s.64(1)</p> <p>Upon application by the employer or any employees in the bargaining unit, decertification may take place with or without a representation vote when there is failure to give notice to bargain, to commence bargaining or to seek to bargain within certain delays prescribed by the Act. s.65</p> <p><u>First collective agreement</u></p> <p>When the Board has ordered the settlement of a first collective agreement by arbitration, no application may be considered until after the agreement is settled (timeliness is the same as if there was a negotiated agreement). s.43(24)</p>

COLLECTIVE BARGAINING AND GOVERNMENT INTERVENTION DURING NEGOTIATIONS

Ontario

NOTICE TO BARGAIN

FAILURE TO SETTLE COLLECTIVE BARGAINING DISPUTE

No previous collective agreement

Following certification or voluntary recognition, the trade union must give notice to commence bargaining. s.16

Prior to expiry of collective agreement

Either party may give notice to commence bargaining within 90 days before the expiry of the agreement or in accordance with provisions in the agreement relating to termination or renewal. s.59(1),(2)

Statutory obligations

The parties must meet within 15 days from the giving of the notice, or within such further period as they may agree upon, and must bargain in good faith. ss.17,60

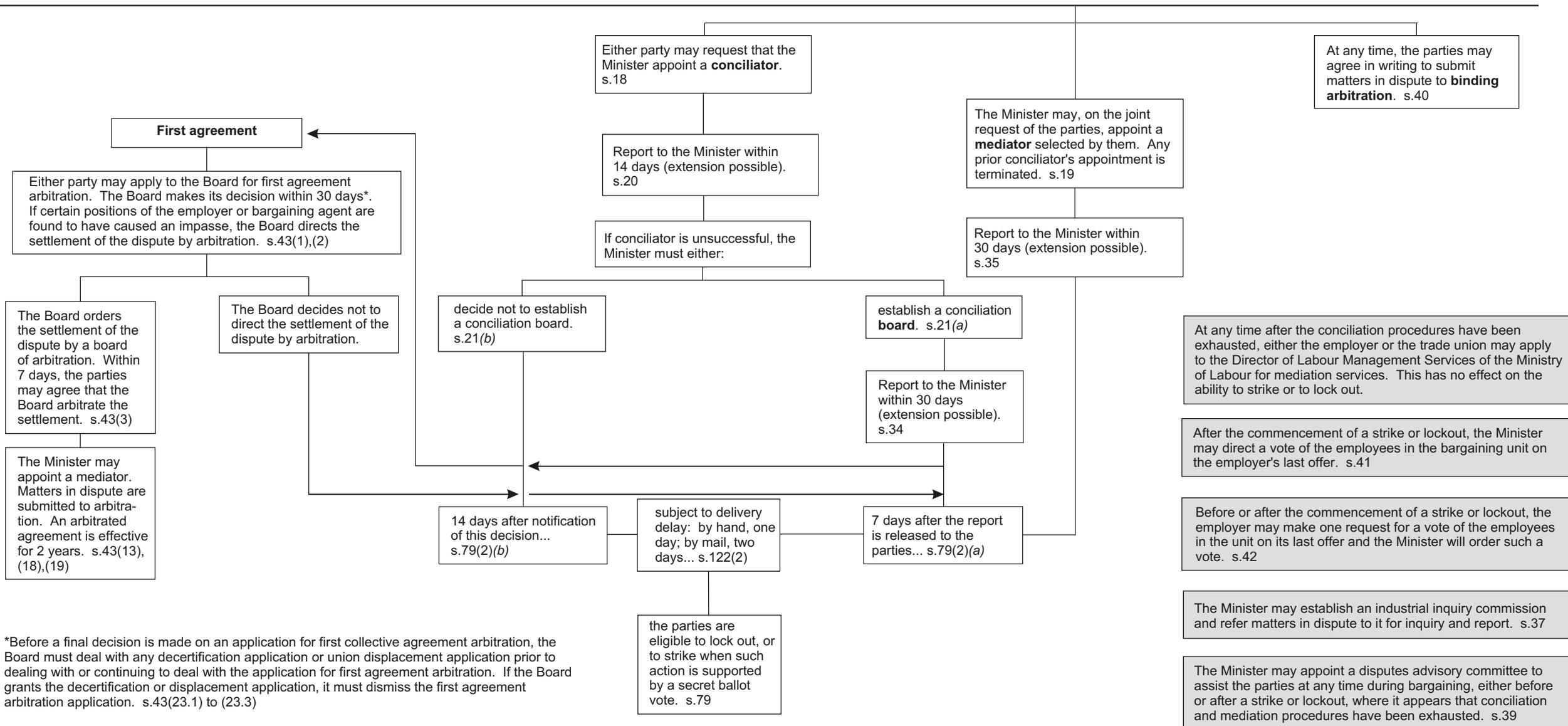
Statutory freeze following notice to bargain

When no collective agreement is in operation, except with the consent of the other party, there may not be any alteration in the rates of wages, other terms or conditions of employment or any right, privilege or duty of the employer, the bargaining agent or the employees. This freeze applies until the parties have acquired the right to strike or to lock out, or the bargaining rights have been cancelled. s.86(1)

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COLLECTIVE BARGAINING AND GOVERNMENT INTERVENTION DURING NEGOTIATIONS (continued)

FAILURE TO SETTLE COLLECTIVE BARGAINING DISPUTE



REQUIREMENTS CONCERNING LEGAL STRIKES

Ontario

PREREQUISITES TO LEGAL STRIKE (Similar requirements apply with respect to legal lockouts)

STRIKE VOTE

Strike action is prohibited:

from the time the Board orders the settlement of a first collective agreement by arbitration; s.43(14)

while a collective agreement is in operation (Unresolved differences that may arise over the interpretation, application, administration or alleged violation of a collective agreement are settled through a grievance arbitration process.); ss.46,48,79(1)

until the Minister has appointed a conciliator or a mediator; and

- a) until 7 days after the Minister has released to the parties the report of a conciliation board or mediator (this is subject to delivery delay); or
- b) until 14 days after the Minister has released to the parties a notice that he/she does not consider it advisable to appoint a conciliation board. This is subject to delivery delay. ss.79(2),122(2)

A strike cannot take place unless it has been authorized by a majority of the employees in the bargaining unit who participate in a secret ballot. A strike vote may take place at the earliest 30 days prior to the expiry of the collective agreement or, if no collective agreement has been in operation, on or after the date on which a conciliator is appointed. This requirement for a strike vote does not apply to employees in the construction industry or to certain maintenance employees represented by a construction trade union. In the case of a first collective agreement, the ballot question in a strike vote is limited to a choice between authorizing or not authorizing a strike; no reference to ratifying a proposed collective agreement or memorandum of settlement is permitted. ss. 79(3),(4),(5),(7),(8), 79.1(1), (3)

Remark re: ratification vote

A proposed collective agreement or memorandum of settlement cannot take effect unless it has been ratified by a majority of employees in the bargaining unit who participate in a secret ballot. This does not apply if a collective agreement has been imposed by order of the Board, settled by arbitration, accepted by a vote on the employer's last offer or if it applies to employees in the construction industry or to certain maintenance employees represented by a construction trade union. s.44

Any strike or ratification vote must be conducted in such a manner that those entitled to vote have ample opportunity to do so. s.79(9)

In the case of a first collective agreement, the ballot question in a ratification vote is limited to a choice between ratifying or not ratifying the proposed collective agreement or memorandum of settlement; no reference to authorizing a strike is permitted. s.79.1(1), (2)

STRIKE REPLACEMENTS, REINSTATEMENT AND OTHER PROVISIONS

When the Board orders the settlement of a first collective agreement by arbitration during a strike or lockout, the employees affected by the strike or lockout must be reinstated in accordance with an agreement between the parties or, if there is no agreement, on the basis of length of service, except as may be directed by the Board for the purpose of allowing the employer to start up operations. This requirement applies regardless of the presence of replacement employees but does not apply where, because of the permanent discontinuance of all or part of his/her business, the employer no longer has persons engaged in performing work of the same or a similar nature to work which the employee performed before the work stoppage. s.43(14),(15)

No person, employer, employers' organization, or person acting on their behalf may retain the services of a professional strikebreaker, and no one may act as such. A "professional strikebreaker" is defined as a person not involved in a dispute whose primary object, in the Board's opinion, is to interfere with, obstruct, prevent, restrain, or disrupt the exercise of any right under the Act in anticipation of, or during, a legal strike or lockout. s.78

In the case of a legal strike, an employee can make an unconditional application in writing to the employer within six months from the commencement of the strike to return to work. There is then an obligation to reinstate the employee without discrimination on terms he/she and the employer agree upon, unless the employer no longer has persons engaged in the type of work performed by the employee prior to the cessation of work or has discontinued or suspended operations for cause. In the latter case, if the employer resumes such operations, those employees who have made an application must be reinstated first. s.80

CERTAIN OBLIGATIONS AND PROHIBITIONS APPLYING TO THE PARTIES

Ontario

BARGAINING AGENT

EMPLOYER

Duty of fair representation

A trade union representing employees in a bargaining unit is prohibited from acting in a manner that is arbitrary, discriminatory, or in bad faith in the representation of any employee in the unit, whether or not such person is a member of the trade union. s.74

Operation of hiring halls

Where, in accordance with a collective agreement, a trade union is engaged in the selection, referral, assignment, designation, or scheduling of persons to employment, it must not act in a manner that is arbitrary, discriminatory, or in bad faith. s.75

Limitations on the application of union security clauses requiring dismissal

A trade union may not require an employer to discharge an employee because he/she has been expelled or suspended from membership in the trade union or such membership has been denied or withheld because of a discriminatory application of membership rules or due to certain actions of the employee (i.e., membership in another trade union, activity against the trade union or on behalf of another trade union, reasonable dissent, or refusal to pay unreasonable fees, dues or other assessments). s.51(2)

The above prohibition does not apply to an employee who has engaged in unlawful activity against the trade union or whose activity against it or on behalf of another trade union has been instigated by management or has involved its participation or support. s.51(3)

Compulsory deduction of union dues

Except in the construction industry, upon a request from the trade union, there must be included in the collective agreement a provision requiring the employer to deduct from the wages of each employee in the bargaining unit, whether or not he/she is a member of the union, the amount of the regular union dues and to remit that amount to the trade union without delay. s.47(1)

The Board may exempt religious objectors from such a provision or a requirement to belong to a trade union as a condition of employment as long as the amounts of any initiation fees, dues, or other assessments are paid to a charity. The charity is mutually agreed upon by the employee and the union; failing an agreement, a registered charitable organization may be designated by the Board. s.52(1)

The exemption from provisions of a collective agreement requiring membership in a trade union as a condition of employment, or the payment of dues to a trade union, applies to those employed at the time the agreement containing these provisions is first entered into, and only during the term of such agreement. It does not apply to employees whose employment commences after the signing of that collective agreement. s.52(2)