

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.34(2)</p> <p><u>Certified trade union but no agreement in force</u></p> <p>After the expiry of 12 months from the date on which the incumbent bargaining agent was formally certified or from the date on which any court proceedings regarding the certification were terminated, whichever is later, or when certification is cancelled. ss.35(1), 39(5)</p> <p>If an agreement has expired and bargaining has taken place, 90 days after termination or before if the bargaining agent consents. s.35(3)</p> <p><u>Agreement in force</u></p> <p>After 6 months from the date on which the agreement became effective and before the last 3 months of its term. s.35(2)(a),(b)</p> <p><u>Agreement in force (18 months or less)</u></p> <p>During the 3 months immediately preceding the last 3 months of the term. s.35(2)(c)</p> <p><u>Agreement in force (more than 18 months)</u></p> <p>During the 3 months immediately preceding any anniversary of the date on which the agreement became effective or during the 3 months immediately preceding the last 3 months of the term. s.35(2)(d)</p>	<p>"Unit" means an employee or a group of employees, and the expression "appropriate for collective bargaining", where used with reference to a unit, means a unit that is appropriate for collective bargaining whether it is an employer unit, craft unit, technical unit, plant unit, or any other unit and whether or not the employees therein are employed by one or more employers. s.1</p> <p>The term "employee" includes any person designated by the Board** as an employee for the purposes of the Act, notwithstanding that the person to whom the employee provides services is not vicariously liable for the employee's acts or omissions. s.1</p> <p>In determining whether a proposed unit is appropriate for collective bargaining, the Board, if it deems appropriate to do so, may alter the description of the unit, include or exclude employees or classes of employees or create two or more units. ss.39(2),142(5)</p> <p>However, the Board may not include in a unit professional employees practising a profession with other employees unless it is satisfied that a majority of the professional employees wish to be included in the unit. s.39(3)</p> <p>Where the Board allows an application for certification during a legal strike or lockout, unless in its opinion there are compelling industrial relations reasons to the contrary, for the purposes of the application, the unit is deemed to contain only those employees who were in it and on the employer's payroll on the last day before the work stoppage and who, in its opinion, have a continuing interest in the outcome of the conflict. s.35(6)</p>	<p>The Board may certify a union on an interim basis when it is satisfied that any dispute about the composition of a proposed bargaining unit cannot affect the union's right to certification (either party may then give notice to bargain). s.39(4)</p> <p>If the Board is satisfied that, at the time of the filing of an application for certification, at least 40% but fewer than 65% of the employees in the bargaining unit wished to have the union represent them as their bargaining agent, it must conduct a vote among the employees in the unit. If the level of support for the union is 65% or more, the Board must grant certification. s.40(1)</p> <p>If the Board has not yet determined the unit that is appropriate for collective bargaining, it may define the voting constituency to be used 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.40(1.1)</p> <p>Evidence of membership in a union is proof of an employee's wish to have the union represent him/her. A person is a member of a union if:</p> <p style="padding-left: 40px;">he/she joined the trade union within six months preceding the application for certification and remained a member on the date it was made; or</p> <p style="padding-left: 40px;">he/she was a member of the union six months before the application for certification and remained a member on the date it was made. s.45(1),(2)</p>	<p>An application may be made by an employee claiming to represent a majority in a unit. s.49(1)</p> <p><u>Timeliness of application</u></p> <p>Same periods as specified for certification when no agreement is in force or there is an agreement or a legal work stoppage. s.49(2)</p> <p><u>Exception</u></p> <p>In all cases, at any time with the consent of the Board. s.49(3)</p> <p><u>Criteria</u></p> <p>A majority of the employees in the unit who participate in a vote no longer wish to be represented by the union. s.51</p> <p>Certification was obtained by fraud (an application may be made by a concerned employee, employer or union or the Board may hold a hearing). s.52</p> <p>Failure by the bargaining agent to exercise bargaining rights within 12 months after certification or any court proceeding arising from it, whichever is later. s.53(1)</p> <p><u>Vote</u></p> <p>If the Board is satisfied that fewer than 50% of the employees in a unit support an application, the Board dismisses the application. s.50(1)</p> <p>The Board conducts a vote when satisfied that at least 50% of the employees in the unit support the application. It may, however, dispense with a vote when the application is not opposed by the union. s.50(2),(3)</p>

* An employer may not alter rates of wages or any other term or condition of employment while an application for certification is pending or, if a trade union has been certified, until 90 days after certification (upon application, that period may be extended by the Board for a further period not exceeding 90 days). However, changes may be made with the consent of the Board (with the consent of the bargaining agent if one is certified), or in accordance with an applicable collective agreement that is in operation. s.10(1), (2), (3)

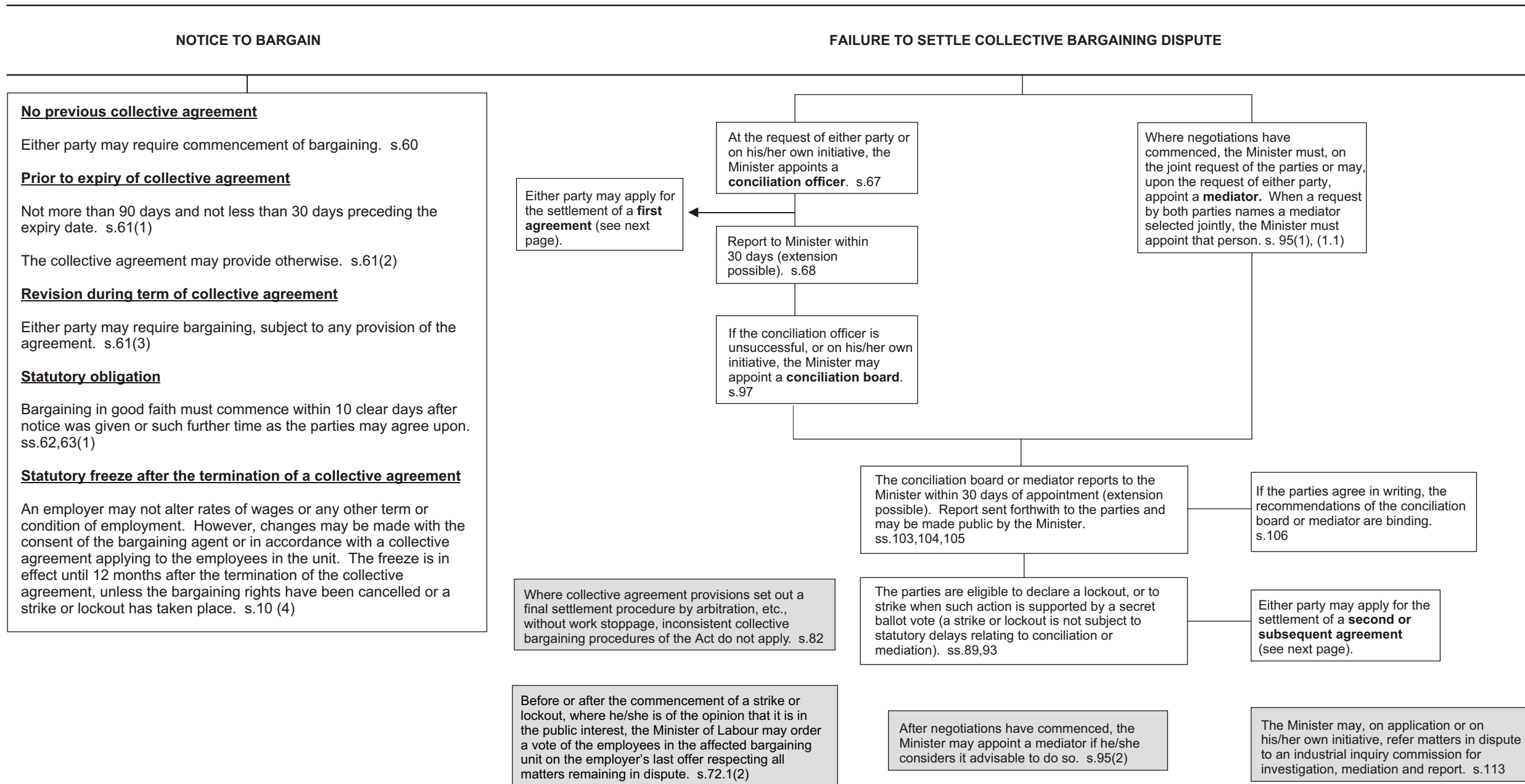
** The term "Board" means the Manitoba Labour Board.

CERTIFICATION OF TRADE UNIONS (continued)

Manitoba

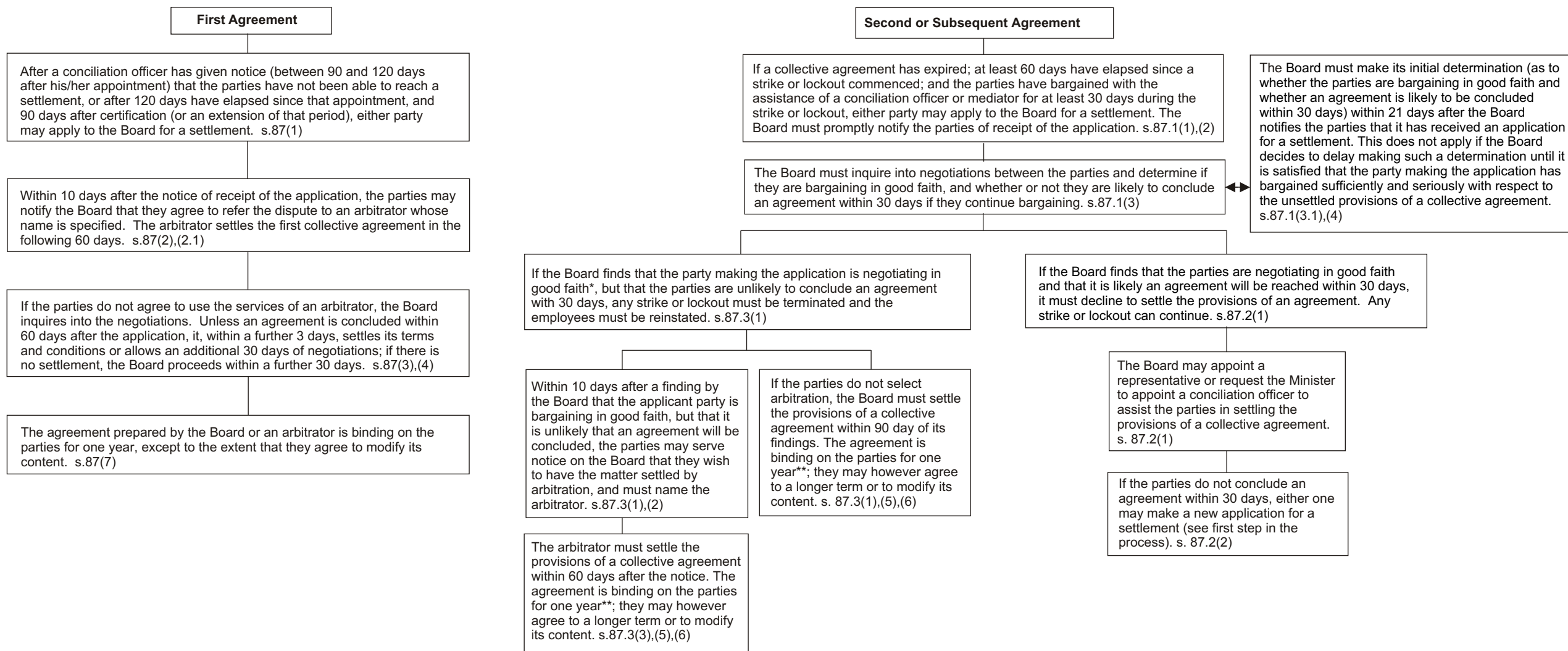
TIMELINESS OF APPLICATION	APPROPRIATE BARGAINING UNIT	REPRESENTATION VOTE	DECERTIFICATION
<p><u>Agreement in force (1 year and provides for successive 1 year term(s))</u></p> <p>During the 3 months previous to the 3 months immediately preceding any date on which the agreement may be terminated. s.35(2)(e)</p> <p><u>Agreement in force (first agreement)</u></p> <p>If the terms and conditions have been settled by the Board, no application during the term of the agreement. s.35(4)</p> <p><u>Legal work stoppage</u></p> <p>After 6 months from the date of commencement and with the consent of the Board. s.35(5)</p> <p><u>Exceptions</u></p> <p>Where the parties to an agreement reach a settlement within fewer than 30 days from the date of giving notice to bargain, on application, the Board may require either or both of them to show cause why an application by another union should not be permitted. s.36(1)</p> <p>In all cases, at any time with the consent of the Board. s.37</p> <p><u>Where application refused</u></p> <p>No application by the same applicant for the same unit, part of it, or any unit containing the same employees together with other employees for at least 6 months, except as otherwise specified by the Board. Manitoba Labour Board Rules of Procedure s.8(14),(15)</p>		<p>If a union applies to displace another trade union which does not consent to the certification of the applicant, the Board conducts a vote if, at the time it filed the application, the union had the support of at least 45% of the employees in the unit. s.40(2)</p> <p>The Board has discretion to certify a union without evidence of majority support if it finds that the employer has committed an unfair labour practice as a result of which the employees' true wishes are not likely to be ascertained and that the union has adequate membership support. s.41</p> <p>A union, or union representative, must provide information to concerned employees during certification drives with respect to initiation fees and regular membership dues. The Board will not accept the membership of an employee in the union as evidence of support, if the employee did not receive this information. ss.45(3.1),45(4)</p> <p>The Board may dismiss an application or order a vote where it is satisfied that, in the solicitation of memberships, the union has used intimidation, fraud, coercion, or penalty threat. s.45(4)</p> <p>In any certification proceeding, the Board may order a vote or votes for the purpose of satisfying itself as to the wishes of employees (including professional employees) in a unit or proposed unit. The result of a vote is determined by the majority of those who cast a ballot. ss.40(3),48(1)</p> <p>A vote must be held within seven days (excluding days on which the offices of the Board are closed) after the application for certification is filed. However, the Board may extend the time for taking a vote in exceptional circumstances. s.48(3),(4),(5)</p>	<p>Notwithstanding that the Board is satisfied that an application is supported by a majority of employees in the unit, it may dismiss the application without a vote when, in its opinion, failure to bargain in good faith by the employer resulted in the collective bargaining process being frustrated. s.50(4)</p>

COLLECTIVE BARGAINING AND GOVERNMENT INTERVENTION DURING NEGOTIATIONS



COLLECTIVE BARGAINING AND GOVERNMENT INTERVENTION DURING NEGOTIATIONS *(continued)*

FAILURE TO SETTLE COLLECTIVE BARGAINING DISPUTE



* If the Board's initial determination is that the party making the application is not bargaining in good faith, the applicant may re-apply at a later date for the settlement of the provisions of a collective agreement. s.87.3 (1.1)

** If a collective agreement is settled more than six months after the last collective agreement expired, the term of the new agreement is extended so that it remains in effect for six months following the date of settlement. s.87.3 (5.1)

REQUIREMENTS CONCERNING LEGAL STRIKES

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

Strike action is prohibited:

when an application is made to the Board to settle the terms and conditions of a first or subsequent collective agreement between the parties; ss.87(5), 87.3(1)

until 90 days after the date on which the union was certified as bargaining agent and any extension of that period (not exceeding 90 days) ordered by the Board; s.89(1)

while a collective agreement is in force (All differences that may arise over the meaning, application or alleged violation of a collective agreement are settled without stoppage of work, by arbitration or other method.); ss.78,89(2)

by a trade union that is not entitled to bargain collectively; s.90

by an employee who is not in a unit for which a trade union is entitled to bargain collectively; s.92

unless a union-conducted vote is in favour of a strike. s.93

STRIKE VOTE

A secret strike vote is mandatory and is decided by a majority of the employees in the unit who cast ballots. Reasonable notice and opportunity to vote must be given by the union. s.93

Remark re: ratification vote

Within 30 days of the reaching of agreement between the parties, a vote by secret ballot must be held among the employees in the unit on the acceptance or rejection of the proposed collective agreement. The union must give reasonable notice and opportunity to cast a ballot. Replacement workers, if any, are not entitled to participate in the vote. The question is determined by the majority of those who cast ballots and, if they accept the agreement, it becomes binding on the parties. ss.69,72(1)

This requirement for a ratification vote does not apply to a first agreement or a subsequent agreement settled by the Board or an arbitrator, or to any amendment to a provision of a collective agreement made prior to the termination date, unless the agreement provides otherwise. s.69(4)

STRIKE REPLACEMENTS, REINSTATEMENT AND OTHER PROVISIONS

It is an unfair labour practice for an employer:

to hire or offer to hire replacement workers, or threaten to do so, prior to or during a lockout or legal strike, for any period of time longer than the duration of the work stoppage;

to refuse to reinstate an employee without just cause when a lockout or legal strike ends with or without a collective agreement and the work the employee was performing is continued (where there is no agreement on reinstatement, it must be done as work becomes available according to the seniority of each employee in the unit at the time the work stoppage began);

to use, or offer or purport to use, a professional strikebreaker, or to authorize such action; a professional strikebreaker is a person not involved in a dispute, and whose primary object is to interfere with, obstruct, prevent, restrain or disrupt the exercise of any right under the Labour Relations Act in anticipation of or during a lockout or legal strike. ss.11,12,13 and 14

REQUIREMENTS CONCERNING LEGAL STRIKES *(continued)*

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PREREQUISITES TO LEGAL STRIKE

STRIKE REPLACEMENTS, REINSTATEMENT AND OTHER PROVISIONS

It is an unfair labour practice for an employer or a bargaining agent to take disciplinary action against an employee covered by a collective agreement who refuses to perform work which would directly facilitate the operation or business of another employer whose employees within Canada are legally on strike or locked out. Disputes concerning the refusal may be referred to the Board for a binding decision. An employer is not required to pay wages to an employee for any period during which the employee refuses to perform his/her work under this provision. s.15

It is an unfair labour practice for an employer to discharge or refuse to continue to employ or to re-employ, lay off, transfer, suspend, or alter the status of an employee who has refused to perform all or any of the duties or responsibilities of an employee who is legally on strike or locked out, unless it satisfies the Board that its decision was in no way affected by the refusal. s.16

When an application is made by either party to settle a first or subsequent collective agreement, any legal strike or lockout must be terminated and the employer must reinstate the employees in the unit in the jobs they had at the time the work stoppage began. Reinstatement must be in accordance with an agreement between the parties, or, if there is no such agreement, it must be carried out on the basis of seniority at the time the strike or lockout commenced, except as directed by the Board for allowing the employer at a totally shutdown workplace to resume normal operations in stages. s.87(5), 87.3

CERTAIN OBLIGATIONS AND PROHIBITIONS APPLYING TO THE PARTIES

Manitoba

BARGAINING AGENT

EMPLOYER

Duty of fair representation

In representing the rights of any employee under the collective agreement, the bargaining agent or its representative must not act in a manner which is arbitrary, discriminatory, or in bad faith or, in the case of a dismissal, fail to take reasonable care to represent the employee's interests. s.20

Limitations on the application of union security clauses requiring dismissal

A union or its representative may not require an employer to terminate an employee because he/she has been expelled or suspended from membership in the union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members as a condition of acquiring or retaining membership. s.19(b)

A provision of a collective agreement is void when it requires an employer to discharge an employee because he/she is or continues to be a member of another union or engages in activities on its behalf. s.23(3)

Compulsory deduction of union dues

Every collective agreement must contain a provision requiring the employer to deduct from the wages of each employee in the unit, whether or not he/she is a member of the union, the amount of the regular union dues and to remit the amounts to the union monthly or as provided in the agreement. Where the employee is not a member of the union, the amount deducted does not include any portion of such dues that is payable in respect of benefits available only to union members or in respect of special assessments payable by them. ss.29,76

The Board may exempt religious objectors from being members of and financially supporting a union, so long as the amount of the regular union dues is paid to a charity agreed upon by the employee and the union or designated by it. Such religious objectors may be employed or continue to be employed notwithstanding an agreement requiring union membership as a condition of employment. ss.76,77