

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.36(2)</p> <p><u>Certified trade union but no agreement in force or bargaining has not commenced</u></p> <p>12 months after date of certification. The Board** may give its consent to an earlier application. s.36(3)</p> <p><u>Agreement in force</u> (2 years or less)</p> <p>Within 2 last months of its term. s.36(4)</p> <p><u>Agreement in force</u> (more than 2 years)</p> <p>In the 23rd and 24th months and during the last two months of each subsequent year of operation or of its term. s.36(4)</p> <p><u>Where application for certification refused</u></p> <p>No subsequent application by the same applicant for the same or substantially the same unit for 6 months, unless the Board gives its consent. Labour Relations Board Rules of Procedure. s.18</p>	<p>"Unit" means a group of two or more employees determined in accordance with the Act for the purposes of collective bargaining, and "appropriate", with reference to a unit, means a unit that is appropriate for collective bargaining whether it be an employer unit, craft unit, technical unit, plant unit, or any other unit, and whether the employees therein are employed by one or more employers. s.2(1),(3)</p> <p>The term "employee" includes a dependent contractor as defined in the Act. Dependent contractors can therefore be included in a unit. s.2(1)</p> <p>In determining that a unit is appropriate for collective bargaining, the Board may include or exclude employees. s.38(1)</p> <p>The Board may find appropriate a unit of professional employees of one or more professions and may include in it other persons whose work is closely related. s.40(1)</p>	<p>The Board may certify if:</p> <ol style="list-style-type: none"> it is satisfied that the majority of the employees in the unit are members in good standing of the trade union; or as a result of a vote of those in the unit, it is satisfied that the trade union has the support of a majority of them; or as a result of a vote of those in the unit, it is satisfied that at least 70% have voted and a majority of those voting have selected the trade union as their bargaining agent. s.38(2) <p>The Board may take representation votes as it deems expedient. s.46</p> <p>The Board will take a representation vote upon an application supported by at least 40% of the employees in a bargaining unit. However, the Board is not required to take a vote if the trade union and employer concerned jointly request it not to do so. Any such vote must be taken no more than 5 days (excluding holidays and weekends) after receipt by the Board of the application for certification (the Board may extend the time for the taking of a vote in exceptional circumstances). The Board is bound by the outcome of a vote, except if it determines that the results have been influenced by intimidation, or any kind of threat or coercion.</p>	<p><u>Timeliness of application</u></p> <p>12 months after certification, 6 months after any decertification application was dismissed, or 12 months after notice to bargain was given by the bargaining agent. The Board may accept and deal with an earlier application. s.52</p> <p><u>Criteria</u></p> <p>Following investigation and any hearing it considers necessary, the Board may, on its own initiative or upon application, revoke a certification if it determines that a bargaining agent no longer represents the majority of employees in a unit. s.51(1)</p> <p>The Board will take a vote upon an application for revocation of certification supported by at least 40% of the employees in a bargaining unit. Such a vote must be taken no more than 5 days (excluding holidays and weekends) after receipt by the Board of the application (the Board may extend the time for the taking of a vote in exceptional circumstances). The Board is bound by the outcome of a vote, except if it determines that the results have been influenced by intimidation, or any kind of threat or coercion. s.51.1(1),(3),(4),(7)</p>

* After notification of an application for certification, the employer concerned may not alter the rates of wages or any other term or condition of employment of employees affected while the application is pending, unless changes are made in accordance with a collective agreement or with the consent of the Board. s.45

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

CERTIFICATION OF TRADE UNIONS *(continued)*

Newfoundland and Labrador

TIMELINESS OF APPLICATION	APPROPRIATE BARGAINING UNIT	REPRESENTATION VOTE	DECERTIFICATION
		<p>The date of application is the operative date for determining support on the basis of membership records. s.47(1),(2),(4),(5),(8),(9)</p> <p>A member in good standing of a trade union is a person who, in the opinion of the Board, has signed an application for membership in that union not more than 90 days before the application for certification is made. Labour Relations Board Rules of Procedure. s.49</p>	<p>Following a vote of the employees required by the Act or ordered by the Board, the latter may revoke a certification if:</p> <ul style="list-style-type: none"> a) a majority in the unit vote in favour of the revocation, or b) at least 70% vote, and a majority of those voting are in favour of the revocation. s.51(2)

COLLECTIVE BARGAINING AND GOVERNMENT INTERVENTION DURING NEGOTIATIONS

Newfoundland and Labrador

NOTICE TO BARGAIN

FAILURE TO SETTLE COLLECTIVE BARGAINING DISPUTE

No previous collective agreement

Either party may give notice to commence bargaining. s.72

Prior to the expiry of collective agreement

Notice to bargain is given by either party not more than 60 days and not less than 30 days before the expiration or termination of the agreement, or within such other period as may be provided in the agreement. s.73

Statutory obligation

The parties must commence to bargain in good faith within 20 days after notice has been given or such further time as they may agree upon. ss.74,75

Statutory freeze following notice to bargain

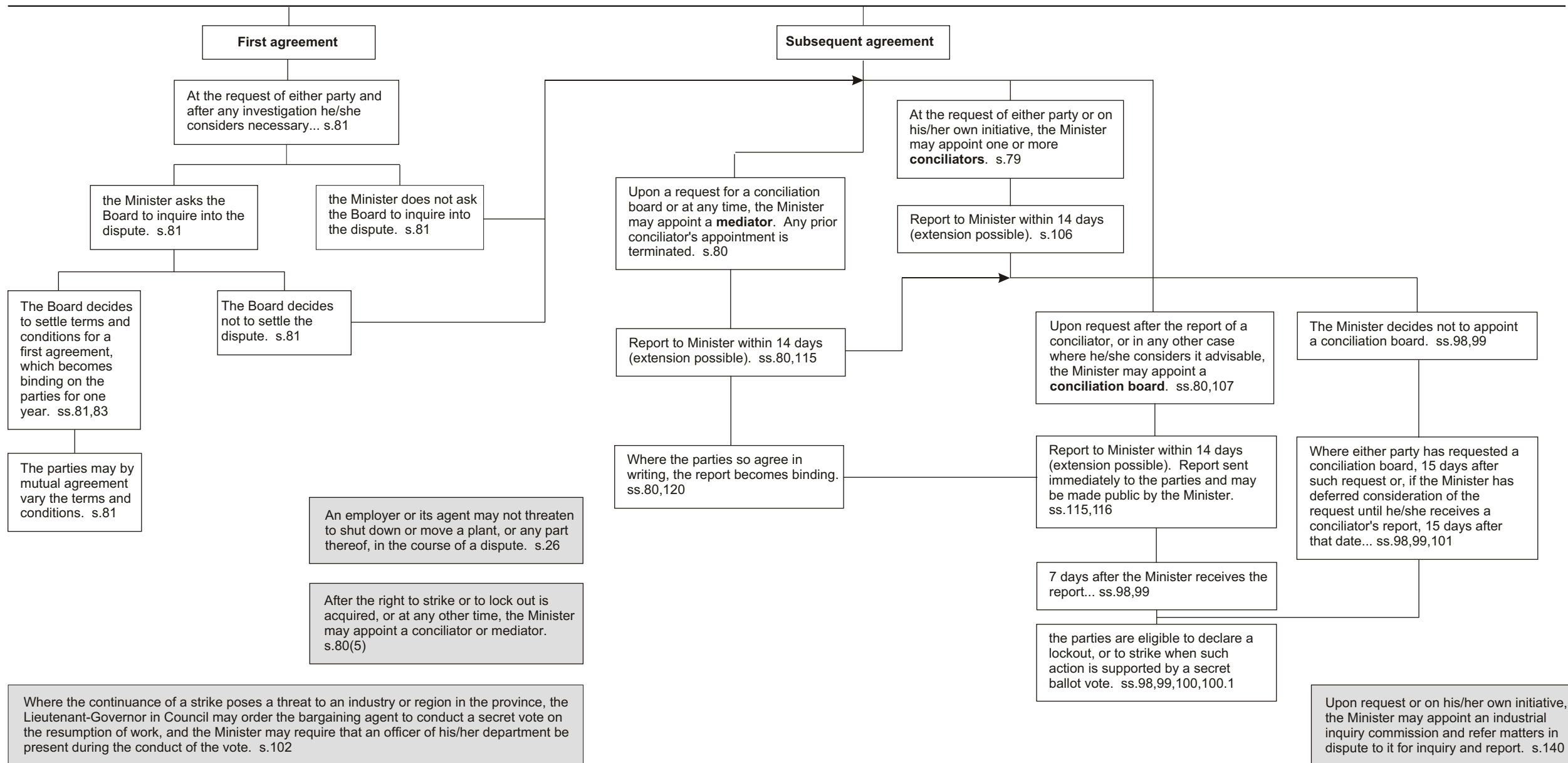
An employer may not alter rates of wages or any other term or condition of employment without the consent of the bargaining agent until a collective agreement is entered into or renewed, or the parties have acquired the right to strike or to lock out. However, alterations may be made with the approval of the Board. ss.74,75

(see next page)

COLLECTIVE BARGAINING AND GOVERNMENT INTERVENTION DURING NEGOTIATIONS (continued)

Newfoundland and Labrador

FAILURE TO SETTLE COLLECTIVE BARGAINING DISPUTE



REQUIREMENTS CONCERNING LEGAL STRIKES

Newfoundland and Labrador

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

STRIKE VOTE

No strike until the bargaining agent is entitled to require the employer to commence bargaining. ss.98,100

A trade union not entitled to bargain collectively cannot declare a strike. s.100

Strike action is prohibited:

- while a collective agreement is in force, except in the case of a dispute respecting a provision that is subject to revision during the term of the agreement (All differences that may arise over the interpretation, application, administration or alleged violation of a collective agreement are settled without stoppage of work, by arbitration or other method.); ss.86,99
- until the parties have bargained collectively in good faith and failed to conclude an agreement; ss.98,99
- until 7 days after the Minister has received the report of the conciliation board; or
- until 15 days after the Minister has received a request from either party to appoint a conciliation board and no notice has been given by the Minister or he/she has notified the party so requesting that he/she will not appoint a board. Where the Minister defers consideration of such a request until after receipt of the report of a conciliation officer, the period within which he/she must decide whether to appoint a conciliation board does not commence until the date on which such report is received. ss.98,99,101

Essential Services

A strike or lockout of workers employed on an offshore petroleum production platform (other than those performing construction or start up work) is prohibited until the parties have concluded an agreement setting out workforce requirements and procedures necessary to ensure the orderly and safe shutdown and maintenance of the platform in the event of such a strike or lockout. When the parties have not reached such an agreement 90 days before the expiry of a collective agreement between them, at the request of either party, the Board may settle the terms and conditions of the agreement. s.100.2

The Electrical Power Control Act, 1994 contains essential services provisions applying to public utilities (other than those exempt from the Public Utilities Act) which buy or generate power and whose primary business is the sale or resale of power. Under these provisions, a public utility and a concerned bargaining agent may jointly formulate a written statement of the number of employees in each classification in a bargaining unit who are considered to be essential employees. Once filed with the public utilities board, the statement is binding upon the parties. s. 22(1)

If no such statement is filed, either the public utility or the bargaining agent may apply to the public utilities board to determine the number of essential employees in each classification. Within 15 days of the making of such an application, the public utility must provide the bargaining agent and the board with a written statement of the number of employees it considers essential in each classification. The number of employees determined to be essential by the board may not exceed that number. s. 22(2),(3),(4)

A procedure permits the public utilities board to amend, at any time, an order of joint settlement by the parties or a determination it has made with respect to essential employees. s. 22(8)

The public utility must notify in writing each employee concerned, and their bargaining agent, that he/she has been named as an essential employee. Such an employee must report for work as if a strike or lockout were not taking place. If an essential employee does not comply with this requirement, the public utility must immediately terminate his/her employment, unless it is satisfied that there are reasonable grounds for the employee not so reporting. s.22(13),(14),(15)

When the bargaining agent is entitled to require the employer to commence bargaining, a strike vote may be held only if the parties have bargained collectively in good faith and failed to reach an agreement and after certain delays relating to conciliation (see prerequisites to legal strike). s.98

No strike may be declared until a vote by secret ballot of the employees in the bargaining unit affected is taken and a majority of those voting are in favour of a strike. The vote must be conducted in such a manner that the employees entitled to vote have ample opportunity to do so. s.100.1(1),(4)

CERTAIN OBLIGATIONS AND PROHIBITIONS APPLYING TO THE PARTIES

Newfoundland and Labrador

BARGAINING AGENT

EMPLOYER

Duty of fair representation

An employee in a bargaining unit, who claims to be aggrieved because his/her bargaining agent has failed to act in good faith in the handling of a grievance filed in accordance with any procedure established by it and to which he/she has not been given ready access, may complain in writing to the Board. The complaint must be made within 90 days from the date on which the grievance first arose. s.130(1),(2)

Limitations on the application of union security clauses requiring dismissal

An employee who claims that he/she has been unfairly expelled from a trade union may make a written complaint to the Board. Following an investigation and after giving the parties concerned an opportunity to be heard, the Board may dismiss the complaint or order that the employee be reinstated in the union and may order further that the complainant be reinstated in his/her employment. s.30(3),(4),(5)

A provision of a collective agreement is not valid if it requires an employer to discharge an employee because he/she is or continues to be a member of, or engages in activities on behalf of, a union other than a specified trade union. s.32

Compulsory deduction of union dues

At the request of the bargaining agent, a collective agreement must include a provision requiring the employer to deduct an amount equal to regular union dues from the wages of affected employees, whether or not they are members of the union, and remit the amount to the union without delay. This clause does not apply to the construction industry. s.87