

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.24(2)(a)</p> <p><u>Certified trade union but no agreement in force</u></p> <p>After expiration of 12 months from the date of certification or, with the consent of the Board**, at any earlier time. s.24(2)(b)</p> <p><u>Agreement in force (3 years or less)</u></p> <p>After the commencement of the last 3 months of operation. s.24(2)(c)</p> <p><u>Agreement in force (more than 3 years)</u></p> <p>During the 34th, 35th and 36th months of operation, and thereafter during the last three months of each year that the agreement continues to operate after the 3rd year of operation, or after the commencement of the last three months of operation. s.24(2)(d)</p> <p><u>Voluntarily recognized trade union and agreement in force</u></p> <p>The trade union may apply at any time in respect of the same or substantially the same unit. s.24.1</p>	<p>"Unit" means a group of two or more employees. s.3(1)</p> <p>The Board determines the unit that, in its opinion, is appropriate for collective bargaining and, for such purposes, it may include or exclude employees and decide any question as to whether a group of employees constitutes a unit. ss.16(p), 27(1), (2)</p> <p>In addition, on application by the employer or a bargaining agent, the Board may review the structure of bargaining units if it is satisfied that they are no longer appropriate for collective bargaining. Before reviewing the structure of bargaining units and issuing any orders, the Board must allow the parties to come to an agreement, within a reasonable time, on the determination of bargaining units appropriate for collective bargaining and on any other questions arising from the review. s. 18.1</p> <p><u>Professional employees</u></p> <p>The Board determines that the unit appropriate for collective bargaining is a unit consisting of only professional employees, unless it would not otherwise be appropriate. The Board may decide on the inclusion of employees of more than one profession and of those performing the functions but lacking the qualifications of a professional employee. s.27(3), (4)</p>	<p>The Board will certify a trade union if satisfied that a majority of the employees in the unit wish to have it represent them as their bargaining agent. s.28</p> <p>The Board may accept as proof of membership in a trade union evidence that a person: (1) has signed an application for membership in the trade union, and (2) has paid at least five dollars to the trade union for or within the six-month period preceding the date on which the application for certification was filed. Canada Industrial Relations Board Regulations, 2001. s.31(1)</p> <p>For the purpose of satisfying itself as to the wishes of the employees, the Board may order that a representation vote be taken. s.29(1)</p> <p>Any person who was not in a bargaining unit on the date on which notice to bargain was given, and was hired or assigned after that date to perform all or part of the duties of an employee in the unit on strike or locked out, is not considered to be included in the unit. s.29(1.1)</p> <p>A vote is ordered by the Board where a trade union applies for certification as the bargaining agent for a unit in respect of which no other trade union is the bargaining agent, and the Board is satisfied that not less than 35% and not more than 50% of the employees in the unit are members of the trade union. s.29(2)</p>	<p><u>Timeliness of application</u></p> <p><u>Collective agreement in force</u></p> <p>Same as for application for certification, except with the consent of the Board. s.38(2)(a)</p> <p><u>No agreement in force</u></p> <p>12 months after the date of certification. s.38(2)(b)</p> <p><u>Where application rejected</u></p> <p>No subsequent application from any employee for the same unit for six months, unless the Board abridges that period. Canada Industrial Relations Board Regulations, 2001. ss.39, 46</p> <p><u>Where strike or lockout in effect</u></p> <p>No application may be made during a legal strike or lockout, except with the consent of the Board. s.38(5)</p> <p><u>Criteria</u></p> <p>A majority of the employees in the unit no longer wish to have the bargaining agent represent them. (A representation vote may be held where the Board considers it appropriate. Where no collective agreement is in force, the Board revokes the certification only if satisfied that the bargaining agent has failed to make a reasonable effort to enter into one.) s.39</p>

* After notification of an application for certification, the employer concerned may not alter the rates of pay, any other term or condition of employment or any right or privilege of employees affected until the application has been withdrawn by the trade union or dismissed by the Board, or thirty days have elapsed after certification, unless changes are made in accordance with a collective agreement or with the consent of the Board. s.24(4)

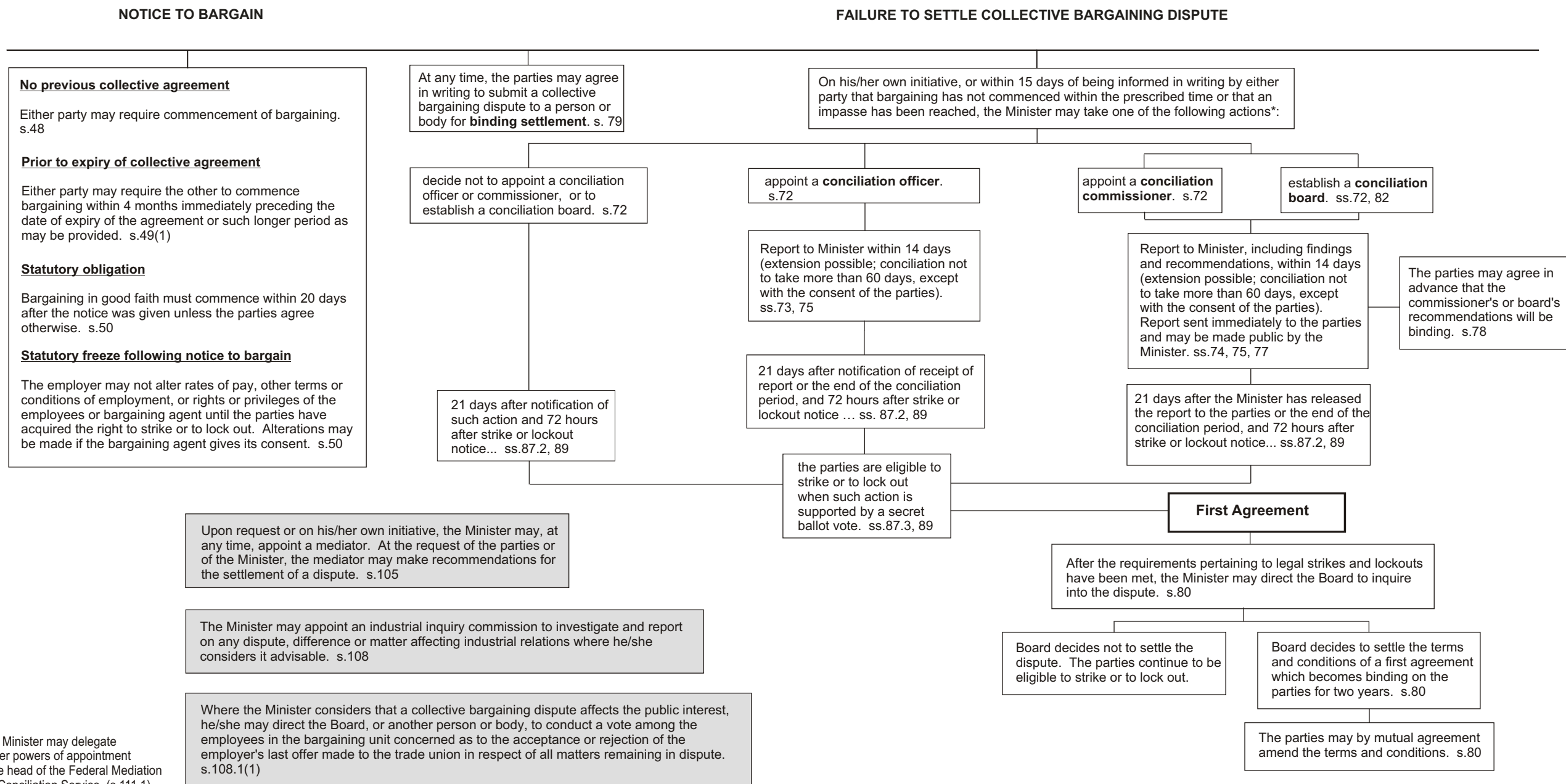
** The term "Board" means the Canada Industrial Relations Board.

CERTIFICATION OF TRADE UNIONS (continued)

Federal

TIMELINESS OF APPLICATION	APPROPRIATE BARGAINING UNIT	REPRESENTATION VOTE	DECERTIFICATION
<p><u>Where strike or lockout in effect</u></p> <p>No application may be made during a legal strike or lockout except with the consent of the Board. s.24(3)</p> <p><u>Where application rejected</u></p> <p>No subsequent application from the same trade union for the same or substantially the same unit for six months, unless the Board abridges that period. Canada Industrial Relations Board Regulations, 2001. ss.38, 46</p>	<p><u>Supervisory employees</u></p> <p>The Board may determine the appropriateness of a unit comprised of or including employees who supervise other employees. s.27(5)</p> <p><u>Dependent contractors</u></p> <p>The term “employee” includes a dependent contractor as defined in the Code. Dependent contractors can therefore be included in a unit. s.3(1)</p> <p><u>Private constables</u></p> <p>The Board must not include a private constable in a unit with other employees. s.27(6)</p> <p><u>Longshoring and other industries</u></p> <p>The Board may determine that the employees of two or more employers actively engaged in the longshoring industry in a geographic area, or in an industry in a geographic area designated by the Governor in Council upon its recommendation, constitute a unit appropriate for collective bargaining. s.34(1)</p> <p>A recommendation by the Board for designation of an industry in a geographic area may be made only if, upon inquiry, it is satisfied that the employers concerned obtain their employees from a group of employees whose members are employed from time to time by some or all of those employers. s.34(2)</p>	<p>Representation votes ordered by the Board are conducted under its supervision, and it determines the employees that are eligible to vote. s.30(1)</p> <p>Results are determined on the basis of the ballots cast by the majority of employees voting. s. 31(1)</p> <p>If less than 35% of the eligible employees actually vote, the representation vote is void. s.31(2)</p> <p>The Board may remedy a serious unfair labour practice committed by an employer by certifying an applicant trade union, despite lack of evidence of majority support from employees in a bargaining unit, if the Board is of the opinion that, in the absence of the unfair labour practice, the union could reasonably have been expected to have had such support. s.99.1</p>	<p>Certification was obtained by fraud (an application may then be made at any time by a concerned employee, employer or union). s.40</p>

COLLECTIVE BARGAINING AND GOVERNMENT INTERVENTION DURING NEGOTIATIONS



* The Minister may delegate his/her powers of appointment to the head of the Federal Mediation and Conciliation Service. (s.111.1)

REQUIREMENTS CONCERNING LEGAL STRIKES
(Similar requirements apply with respect to legal lockouts)

Federal

PREREQUISITES TO LEGAL STRIKE

STRIKE VOTE

A collective agreement is binding on the parties until the requirements for a legal strike or lockout are met. 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.50, 57, 67(4)

Strike action is prohibited unless:

- (1) notice to bargain has been given;
- (2) the parties have failed to meet and commence to bargain within 20 days after notice was given or have negotiated, but have reached an impasse;
- (3) the Minister has received a notice from either party of the failure to reach a settlement or acted on his/her own initiative;
- (4) 21 days have elapsed from the date on which the Minister:
 - notified the parties of the intention not to appoint a conciliation officer or conciliation commissioner, or to establish a conciliation board; or
 - notified the parties of the receipt of the report of a conciliation officer; or
 - released the report of a conciliation commissioner or conciliation board to the parties; or
 - is deemed to have been reported to 60 days after a conciliation officer or conciliation commissioner was appointed or a conciliation board established, or at the end of any extended time limit to which the parties have agreed;
- (5) a strike notice of at least 72 hours has been served on the employer and a copy sent to the Minister (such notice is not required if a legal lockout has occurred); s.87.2
- (6) a vote in favour of a strike was held within the previous 60 days or any longer period agreed to by the parties (such vote is not required if a legal lockout has occurred); s.87.3
- (7) the term of any collective agreement has expired (except if there is a reopener clause or the bargaining agent has acquired the right to give notice to bargain with respect to a technological change, and requirements for legal strikes have been met); s.88.1 and
- (8) the Board has made a determination with respect to the maintenance of certain activities (see next page) following any application by one of the parties or referral by the Minister. s.89(1)

A trade union cannot declare a strike unless it has, within the previous 60 days or any longer period agreed to by the parties, held a secret ballot strike vote among the employees in the unit, and received the approval of the majority of those who voted. No vote is required if the employer has already initiated a legal lockout. Eligible employees must be given a reasonable opportunity to participate in the vote and to be informed of the results. s.87.3

REPLACEMENT WORKERS, REINSTATEMENT AND OTHER PROVISIONS

Employers or persons acting on their behalf are prohibited from using, for the demonstrated purpose of undermining a trade union's representational capacity rather than the pursuit of legitimate bargaining objectives, the services of persons who were not in the bargaining unit on the date on which notice to bargain was given and were hired or assigned after that date to perform all or part of the duties of employees in the bargaining unit on strike or locked out. When the Board determines that this type of unfair labour practice has occurred, it has the power to order the employer to cease using replacement workers for the duration of the dispute. ss.94(2.1), 99(1)

Following a legal work stoppage, employees in a bargaining unit who were on strike or locked out have the right to be reinstated in preference to any persons who were not in the bargaining unit on the date on which notice to bargain was given and were hired or assigned after that date to perform all or part of their duties. s.87.6

An employer or its representative is prohibited from refusing to employ or to continue to employ any person, from discriminating in any manner in regard to employment or any term or condition of employment or from intimidating, threatening or disciplining any person because such employee has participated in a legal strike. s.94(3)(a)

An employer or its representative is prohibited from suspending, disciplining, discharging or otherwise penalizing an employee by reason of his/her refusal to perform all or some of the duties and responsibilities of another employee participating in a strike or affected by a lockout that is legal. s.94(3)(c)

REQUIREMENTS CONCERNING LEGAL STRIKES (continued)

Federal

PREREQUISITES TO LEGAL STRIKE

No employee may participate in a strike unless he/she is a member of a bargaining unit in respect of which notice to bargain was given and the requirements mentioned on the previous page have been met. s.89(2)

Maintenance of Certain Activities

During a legal strike or lockout, the parties must maintain certain activities (i.e. supplying services, operating facilities or producing goods) to the extent necessary to prevent an immediate and serious danger to public health or safety. s.87.4(1)

No later than 15 days after notice to bargain has been given, an employer or a trade union may give notice to the other party of the activities that, in its opinion, must be maintained in the event of a strike or lockout in order to comply with the above requirement and the approximate number of employees in the bargaining unit needed for that purpose. If the parties enter into an agreement on that subject, a copy may be filed with the Board, and it then has the same effect as an order of the Board. If the employer and the trade union do not reach an agreement, the Board, on application by either of them no later than 15 days after notice of dispute has been given, makes the determinations necessary to ensure the application of the maintenance of activities provisions. s.87.4(2), (3), (4)

At any time after notice of dispute has been given, the Minister has the power to refer to the Board any question with respect to the application of the maintenance of activities provisions or with respect to whether an agreement entered into by the parties is sufficient to ensure that those provisions are complied with. Such a referral does not suspend any legal strike or lockout that is in progress. ss.87.4(5), 87.5(3)

On application by one of the parties or on referral by the Minister as mentioned above, the Board has the power to issue orders to ensure compliance with the maintenance of activities provisions. On such application or referral during a legal strike or lockout, it also has the power to review, confirm, amend or cancel an agreement between the parties or a determination or order made on the maintenance of activities, and to issue any orders considered appropriate. s.87.4(6), (7)

Where the Board is satisfied that the level of activity to be continued to prevent an immediate and serious danger to public health or safety renders ineffective the exercise of the right to strike or to lock out, it may, on application by the employer or the trade union, order a binding method of resolving the issues in dispute between the parties. s.87.4(8)

In the event of a work stoppage involving an employer in the longshoring or other port-related industry, that employer as well as its employees and their bargaining agent must maintain normal services to grain vessels at licensed terminal and transfer elevators and ensure their movement in and out of a port. s.87.7(1)

Legal Strikes or Lockouts During Period Between Parliaments

Where a strike or lockout occurs (or may occur) during the period following the dissolution of Parliament for a general election and, in the opinion of the Governor in Council, it adversely affects (or would adversely affect) the national interest, he/she may delay any strike or lockout action until 21 days following the date fixed for the return of the writs. s.90(1)

CERTAIN OBLIGATIONS AND PROHIBITIONS APPLYING TO THE PARTIES

Federal

BARGAINING AGENT

EMPLOYER

Duty of fair representation

A trade union or its representative is prohibited from acting in a manner that is arbitrary, discriminatory, or in bad faith in the representation of any employee in the bargaining unit with respect to rights under the applicable collective agreement. s.37

Operation of hiring halls

In operating a hiring hall pursuant to a collective agreement, a trade union must apply, fairly and without discrimination, rules that it must establish and keep posted, for the purpose of making referrals of persons to employment. s.69

Limitations on the application of union security clauses requiring dismissal

A trade 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 trade 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.95(e)

Compulsory deduction of union dues

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 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. Where an employee is not a member of the union, the regular dues do not include any payment for a benefit available only to union members. s.70

The Board may exempt religious objectors from such a provision or a requirement to belong to a trade union as a condition of employment, so long as the amount of the regular union dues is paid to a registered charity. The charity is mutually agreed upon by the employee and the union or, failing an agreement, may be designated by the Board. s.70