

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.10(2)</p> <p><u>Certified trade union but no agreement in force</u></p> <p>12 months after date of certification or 12 months after termination of agreement in force at the time of certification. s.10(3)</p> <p><u>Recognized union, no agreement</u></p> <p>12 months after the signing of the recognition agreement (unless the Board** has declared that the union was not entitled to represent the employees). s.10(4)</p> <p><u>Agreement in force (3 years or less)</u></p> <p>After the commencement of the last two months of the agreement. s.10(5)</p> <p><u>Agreement in force (more than 3 years)</u></p> <p>During the 35th and 36th months of the agreement and during the last two months of any subsequent year or after the commencement of the last two months of operation. s.10(6)</p> <p><u>Agreement in force (for further term(s))</u></p> <p>During the last two months of each year of the further term or after the commencement of the last two months of the operation of the agreement. s.10(7)</p>	<p>"Unit" or "bargaining unit" means a group of employees and "appropriate for collective bargaining", with reference to a unit, means a unit that is appropriate for such purposes whether it is an employer unit, craft unit, technical unit, professional unit, plant unit, or any other unit and whether or not the employees therein are employed by one or more employers. s.1(1)</p> <p>In the agricultural industry, a unit must comprise five or more employees. s.1(5)</p> <p>In determining that a unit is appropriate for collective bargaining, the Board may include or exclude employees. s.13(1)</p> <p>A unit consisting solely of professionals is appropriate for collective bargaining but the Board may include members of a profession with other employees if it is satisfied that this is the wish of the majority of such members. s.1(5)</p>	<p>When the Board is satisfied that not less than 40% and not more than 60% of the employees in the bargaining unit are members in good standing of the trade union, it may direct that a representation vote be taken. s.14(2)</p> <p>Certification takes place if more than 50% of the ballots of all those eligible to vote are cast in favour of the union or more than 60% in the unit are members in good standing. Employees absent from work during voting hours and who do not cast their ballots are not counted as eligible. s.14(3),(4)</p> <p>When the Board is satisfied that more than 50% are members in good standing as of the date of the application for certification, it <u>may</u> certify the trade union without taking a vote. s.14(1),(5)</p> <p>A pre-hearing representation vote may be requested by a trade union, be allowed by the Board, and become valid if not less than 40% of the employees in the unit are members of the union at the time the application is made. s.15</p> <p>"Member" or "member in good standing" includes a person who has paid to the trade union on his/her own behalf an amount of at least one dollar in respect of initiation fees or monthly or other periodic dues. s.16</p>	<p><u>Timeliness of application</u></p> <p>Same as for certification. s.23(1),(2)</p> <p>In certain circumstances, the Board may allow an earlier application. An application is subject to delays related to conciliation, mediation, strike or lockout. ss.23(8),30</p> <p>The Board may refuse to entertain a new application by an unsuccessful applicant for a period not exceeding 10 months. s.126(2)</p> <p><u>Criteria</u></p> <p>If the Board is satisfied that at least 40% of the employees support the application, a representation vote is taken. Decertification takes place if more than 50% of the ballots of all those eligible to vote are cast against the union. Employees absent from work during voting hours and who do not cast their ballots are not counted as eligible. s.23(3),(4),(5)</p> <p>An application may be made by any employee, another trade union, or the employer if the Board is satisfied that a substantial question exists as to whether there is support from a majority of employees. s.23(1),(2),(6),(7)</p>

*After notification of an application for certification, the employer concerned may not alter the rights, privileges or duties of the employees affected, except with the consent of the trade union. This prohibition remains in force until the trade union has given notice to bargain or the application for certification is withdrawn, or refused by the Board. s. 35(1)

** The term "Board" means the Labour and Employment Board.

CERTIFICATION OF TRADE UNIONS *(continued)*

New Brunswick

TIMELINESS OF APPLICATION	APPROPRIATE BARGAINING UNIT	REPRESENTATION VOTE	DECERTIFICATION
<p><u>Exceptions</u></p> <p>In certain circumstances when a collective agreement is in force, the Board may give consent to an earlier application. ss.10(8),33(3)</p> <p>In all cases, an application is subject to delays related to conciliation, mediation, strike or lockout. s.11</p> <p><u>Where application for certification rejected</u></p> <p>The Board may prescribe a waiting period before a new application will be considered from the same applicant. s.20</p>		<p>Where employee rights under the Act have been violated so that the true wishes of the employees are unlikely to be ascertained, the Board may certify the trade union, if satisfied that it has adequate membership support, or refuse to certify if such support has been obtained by virtue of an unfair labour practice. s.106(8)(e)</p> <p>The Board has the power to conduct representation votes and give such directions in connection with the vote as it deems necessary. The Board may also hold additional representation votes to determine employees' wishes. s.126(2)</p>	<p>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.24(1),(2)</p> <p>Decertification may take place at any time:</p> <ul style="list-style-type: none"> a) when there have been no employees in the bargaining unit for 2 years, or b) when certification was obtained fraudulently (an application may be made by a concerned employee, employer or union). ss.25,26

COLLECTIVE BARGAINING AND GOVERNMENT INTERVENTION DURING NEGOTIATIONS

New Brunswick

NOTICE TO BARGAIN

FAILURE TO SETTLE COLLECTIVE BARGAINING DISPUTE

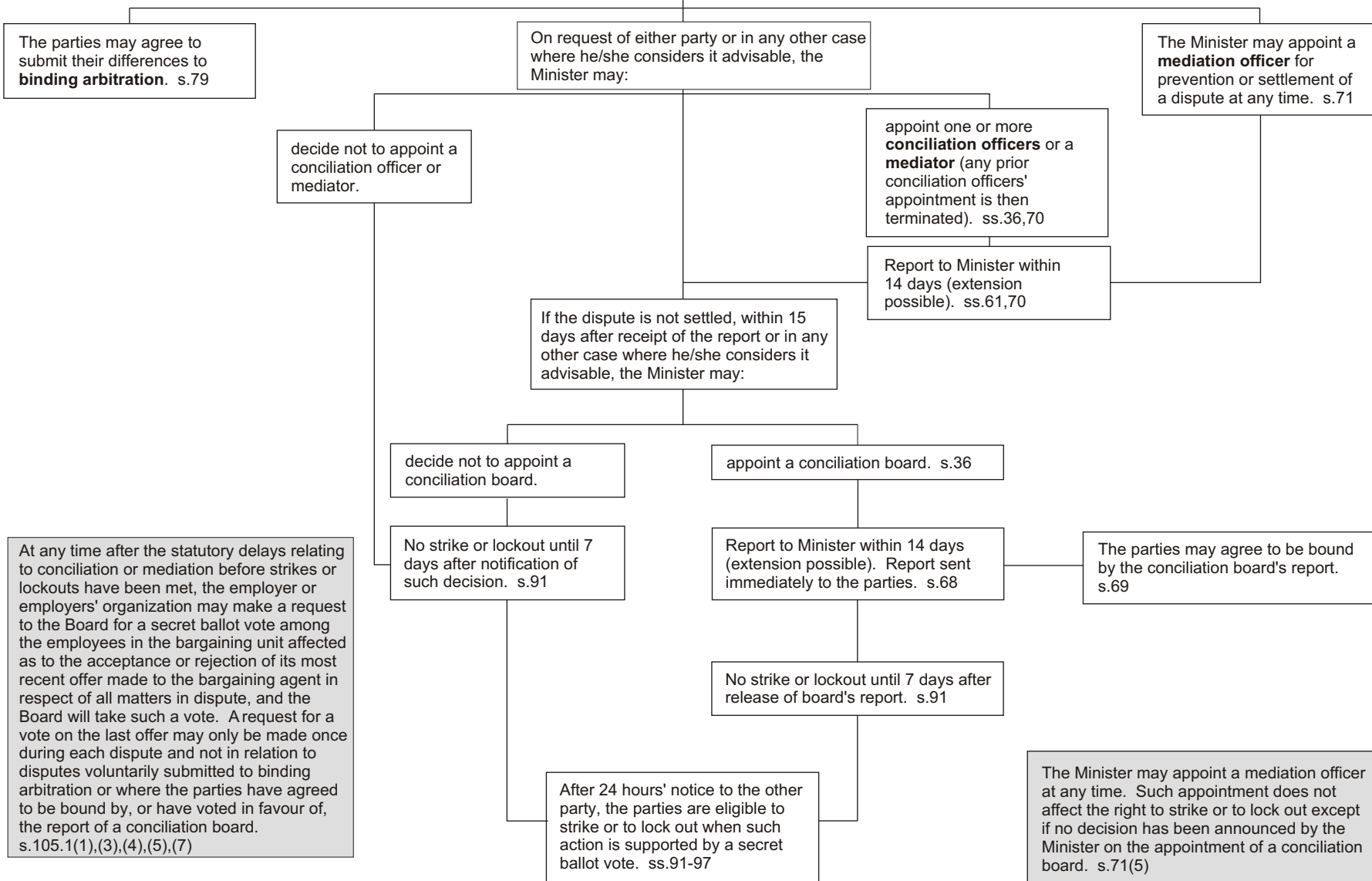
No previous collective agreement
 Either party may give notice to commence bargaining. s.32(1)

Prior to expiry of collective agreement
 Either party may give notice to commence bargaining within the period between the 90th and the 30th day before the expiry of the agreement or such longer period as may be provided in the agreement. s.33(1),(2)

Statutory obligation
 The parties must commence to bargain within 20 days after notice has been given or such further time as they may agree upon. s.34(1),(2)

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. The freeze applies until a collective agreement is entered into or is renewed, or the parties have acquired the right to strike or to lock out, or the bargaining rights have been cancelled. s.35(2)

Upon request or on his/her own initiative, the Minister may appoint an industrial inquiry commission and refer matters in dispute to it for inquiry and report. s.90



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

New Brunswick

PREREQUISITES TO LEGAL STRIKE**STRIKE VOTE**

Strike action is prohibited:

- while a collective agreement is in force, except in the case of the revision of a provision of the collective 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.55, 91(1),(3)
- until a party has requested the appointment of a conciliation officer; s.91(2)
- until seven days have elapsed from the date on which the Minister:
 - notified the parties that he/she will not appoint a conciliation officer or mediator; or
 - notified the parties that he/she will not appoint a conciliation board; or
 - releases the report of a conciliation board to the parties; s.91(2)
- where the parties have agreed to be bound by the award of a conciliation board, arbitrator, or arbitration board; s.92(2)
- where the parties have agreed to be bound by the result of a vote on acceptance of the report of a conciliation board, until 7 days after the Minister has released such report and until a vote has been taken (the vote must be held within 30 days after the release of the report); s.93(1),(2)
- until the employer has been given a written 24 hours' strike notice (if the notice is not acted upon, the employer may require a further notice of up to 24 hours for the purpose of undertaking an orderly shutdown of its operations; if a strike does not occur within six hours after that notice period has elapsed, it is not allowed until a further similar notice is given); s.97(1),(4)
- after one year from the date of the strike vote or the date fixed for the return on such a vote. In this case, it is deemed that the dispute no longer exists. s.98(4),(5)

A mandatory secret strike vote is taken by the trade union. A strike is legal if a majority of those in the bargaining unit are in favour. s.94(1),(2),(6)

An employee is not counted as an employee in the unit if he/she has not been employed for the 3 months preceding the vote or did not cast a ballot because he/she was absent and the vote was taken on a working day otherwise than by mail. s.94(3)

Any dispute related to the vote is referred to the Board for decision. s.94(4),(5)

A strike vote may not be taken until one of the prerequisites to a legal strike mentioned in subsection 91(2) is met (see the other box on this page). s.98(2)

CERTAIN OBLIGATIONS AND PROHIBITIONS APPLYING TO THE PARTIES

New Brunswick

BARGAINING AGENT

EMPLOYER

Limitations on the application of union security clauses requiring dismissal

No trade union may require an employer to discharge an employee who has been expelled or suspended from membership or denied membership where:

- a) the reason for such action is that the employee was or is a member of another union, or has engaged in activity against the union or on behalf of another trade union, or
- b) the employee has been discriminated against by the union in the application of its membership rules although he/she is qualified to engage in the trade or work and is otherwise eligible for membership. s.8(3)

Exception

The prohibition does not apply to an employee who has engaged in unlawful activity against the trade union or whose activity against the union or on behalf of another union has been instigated, procured or supported by, or has involved participation by the employer or its representative. s.8(4)

Other limitations

No employer may discharge an employee when it has reasonable grounds for believing that union membership was not available to him/her on the same terms and conditions generally applicable to other members. s.8(10)

Authorization to deduct union dues

The employer must honour a written authorization for the deduction of union dues from an employee's wages. The authorization continues in effect for at least 3 months and thereafter until revoked. A revocation may be delivered or sent to the employer at any time when there is no collective agreement in operation or within two months prior to the expiry date if one is in force. s.9