

TIMELINESS OF APPLICATION*	APPROPRIATE BARGAINING UNIT	REPRESENTATION VOTE	DECERTIFICATION
<p><b><u>No certified trade union, no collective agreement</u></b></p> <p>At any time. s.23(2)</p> <p><b><u>Certified trade union but no agreement in force</u></b></p> <p>12 months after date of certification. The Board** may give its consent to an earlier application. s.23(3)</p> <p><b><u>Agreement in force (3 years or less)</u></b></p> <p>After the commencement of the last 3 months of its operation. s.23(4)</p> <p><b><u>Agreement in force (more than 3 years)</u></b></p> <p>During the 34th, 35th and 36th months of the agreement; during the last 3 months of each year that the agreement continues to operate after the 3rd year, or after the commencement of the last 3 months of operation. s.23(5)</p> <p><b><u>Where application refused</u></b></p> <p>The Board may prescribe a waiting period before a new application by the same applicant will be considered. s.25(16)</p>	<p>"Unit" means a group of two or more employees, and "appropriate for collective bargaining", with reference to a unit, means a unit that is appropriate for such purposes whether it be 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(1)x)</p> <p>Persons working on fishing vessels who accept a share of the proceeds of the catch in lieu of or in addition to wages are considered to be employees for the purposes of the Act. s.2(1)</p> <p>The Board determines whether the unit is appropriate for collective bargaining and it may include employees in it or exclude them from it. s.25(4)</p> <p>Community of interest among the employees in such matters as work location, hours of work, working conditions, and methods of remuneration will be considered by the Board in determining the appropriate bargaining unit. s.25(14)</p> <p>Upon an application made by an employer, if the Board is satisfied that such employer is engaged in manufacturing at two or more interdependent manufacturing locations in the province, it will order that the appropriate unit is one comprising all employees at all such locations, subject only to the normal exclusions. s.26(2),(3)</p> <p>An application may not be made:</p> <ol style="list-style-type: none"> <li>a) more than one year following the commencement of production at the second manufacturing location or at an additional manufacturing location of an employer already covered by such an order of the Board; or</li> <li>b) if certification or voluntary recognition has been granted with respect to one or more locations. s.26(4),(6)</li> </ol>	<p>A trade union claiming to have as members in good standing not less than 40% of the employees in a unit may apply for certification. s.23(1)</p> <p>A member in good standing of a trade union is a person who (1) at the date of the application has joined the trade union or signed an application for membership, and (2) has paid on his/her own behalf at least two dollars in union dues within the period commencing three months before the month in which the application for certification was made and ending upon the date of application. Rules of Procedure s.10</p> <p>The Board then takes a vote to determine the wishes of the employees concerned. Normally, the vote is to be conducted no more than five working days after receipt by the Board of the application and three working days after the Board's notices are received by the employer. The Board may delay the vote if it decides that investigations are required. s.25(1),(3)</p> <p>If it is satisfied that less than 40% of the employees in the unit are members in good standing, it will dismiss the application; if the percentage is 40% or more, it will conduct a vote (it may dismiss the application if misleading membership evidence is filed). s.25(7),(11)</p> <p>If the majority of the votes cast are in favour of the trade union, the Board will grant certification. It may, however, dismiss the application in case of significant contravention of the Act or regulations by the union. s.25(8),(10)</p> <p>When any contravention of the legislation by the employer results in the vote not reflecting the employees' true wishes, the Board may certify the trade union if it is satisfied that it represents at least 40% of the employees in the unit. s.25(9)</p>	<p><b><u>Timeliness of application</u></b></p> <p>If no agreement is in force, at least 12 months after certification; if an agreement is in force, same timeliness as for certification. s.29</p> <p><b><u>Criteria</u></b></p> <p>When it is satisfied that a significant number of members of the trade union allege that such union is not adequately fulfilling its responsibilities or no longer represents a majority of the employees in the unit, the Board may, upon application for revocation, order the taking of a vote to determine the wishes of the employees and may revoke or confirm the certification in accordance with the result of the vote. s.29</p>
<p>* After 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 or, if the trade union is certified, before notice to commence collective bargaining has been given. However, changes may be made with the consent of the Board. s.23(7)</p> <p>** The term "Board" means the Labour Relations Board.</p>			

## COLLECTIVE BARGAINING AND GOVERNMENT INTERVENTION DURING NEGOTIATIONS

### NOTICE TO BARGAIN

**No previous collective agreement**

Either party may give notice to commence bargaining. s.33

**Prior to expiry of collective agreement**

Either party may give notice to commence bargaining within 2 months preceding the date of expiry of the agreement. s.34

**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.35

**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 or the Board until a new collective agreement is concluded or the parties have acquired the right to strike or to lock out. s.35

### FAILURE TO SETTLE COLLECTIVE BARGAINING DISPUTE

At the request of either party or on his/her own initiative, the Minister may appoint a **conciliator**. s.37

Report to Minister within 14 days (extension possible). The conciliator notifies the parties that he/she has submitted a report. s.38

The Minister may appoint a **mediator** at any time. s.40

With the permission of the Minister, the mediator makes a report which is deemed to be a conciliator's report. s.40

14 days after the report is sent to the Minister... s.47

If a conciliator or mediator is unsuccessful, both parties jointly or severally, may request a **conciliation board** within 14 days after the Minister receives the report. ss.39,40(4)

Report to Minister within 14 days (extension possible). Report sent immediately to the parties and may be made public by the Minister. ss.68,69

If the parties so agree, the recommendations become binding. s.72

7 days after the Minister receives the report... s.47

after 48 hours' notice to the Minister... s.47

the parties are eligible to declare a lockout, or to strike when such action is supported by a secret ballot vote. s.47

The Minister may appoint a mediator at any time. s.40

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.73

## REQUIREMENTS CONCERNING LEGAL STRIKES

Nova Scotia

### PREREQUISITES TO LEGAL STRIKE

(Similar requirements apply with respect to legal lockouts)

### STRIKE VOTE

No strike is permitted until:

- the trade union is entitled to require the employer to bargain; s.47(1)
- the parties have bargained collectively and have failed to conclude an agreement; s.47(1)
- either a conciliator has been appointed and 14 days have elapsed since he/she has submitted a report to the Minister or a conciliation board has been established and 7 days have elapsed since the Minister has received its report (no strike may occur more than 6 months after the expiration of either of these delays unless either party has thereafter requested conciliation services and the times have again expired); s.47(1),(2)
- 48 hours after a strike notice has been received by the Minister. s.47(3)

No strike is permitted where:

- a collective agreement is in force, except respecting a dispute arising with reference to a provision expressly subject to revision during the term of the agreement (All differences that may arise over the meaning or violation of a collective agreement are settled without stoppage of work, by arbitration or other method.); ss.42,48
- a vote of both employers and employees is in favour of the acceptance of the report of a conciliation board. s.49(1)

No strike may be declared until a vote by secret ballot of the employees in the unit affected is taken and the majority of such employees have voted in favour of the strike. s.47(3)

### PROTECTION FOR STRIKERS AND NON-STRIKING EMPLOYEES

An employer or its representative is prohibited from refusing to employ or to continue to employ or from discriminating against any person in regard to employment or any term or condition of employment because the person has participated in a legal strike. s.53(3)(a)

An employer 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 legal strike. s.53(3)(c)

## CERTAIN OBLIGATIONS AND PROHIBITIONS APPLYING TO THE PARTIES

Nova Scotia

### 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.54A (3)

#### 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.54(e)

A provision of a collective agreement is not valid when it requires an employer to discharge an employee because he/she is or continues to be a member of another trade union or engages in activities on its behalf. s.59(2)

#### Authorization to deduct union dues

The employer must honour a written authorization for the deduction of wages for the payment of initiation fees and union dues. Unless a collective agreement provides otherwise, an authorization continues in force for at least 3 months and thereafter until revoked. s.60(2),(5)

\*This legislation will come into force on October 1, 2006.

**Labour Law Analysis  
International and Intergovernmental Labour Affairs  
Labour Branch  
Human Resources and Skills Development Canada  
January 1, 2006**