

DRAFT LEGISLATION

An Act to Provide for the Fair Resolution of Health Care or Community Services Disputes Through Mediation and Binding Arbitration

Be it enacted by the Governor and Assembly as follows:

- 1 Chapter 475 of the Revised Statutes, 1989, the *Trade Union Act*, is amended by adding immediately after Section 107 the following Part:

PART III HEALTH CARE AND COMMUNITY SERVICES LABOUR RELATIONS

INTERPRETATION

Interpretation of Part III

108 The purpose of this Part is to protect the health, safety and well-being of the public while preserving free and fair collective bargaining and the fair and impartial resolution of collective bargaining disputes.

Definitions

109 In this Part,

- (a) "health care or community services bargaining unit" means
- (i) a unit of employees employed in a hospital, health centre, medical centre or another institution or facility established for the treatment of persons with sickness, disease or injury and the prevention of sickness or disease and operated by a district health authority or the Izaak Walton Killam Health Centre,
 - (ii) a unit of employees of an ambulance service, communications centre service or emergency health service as defined in the *Emergency Health Services Act*,
 - (iii) a unit of employees of a home for special care or any other residential home under the mandate of the Services for Persons with Disabilities Program in the Department of Community Services,

- (iv) a unit of employees of a nursing home, long-term care facility, continuing care facility, guest home, home for the aged or other institution operated for the observation, care or treatment of convalescent or chronically ill persons,
- (v) a unit of employees of a community-based health service provided to people in their communities, including health education, health promotion, disease prevention, public health services, mental health services, addiction services, emergency health services, palliative care services, home care services, home support services, long term care services, continuing care services, rehabilitation services, and treatment for illness and injury in relation to primary care, and
- (vi) a unit of employees of a health service provided to people through hospitals and other health care institutions, including health education, health promotion, disease prevention, public-health services, mental health services, addiction services, emergency health services, palliative care services, home care services, home support services, long-term care services, continuing care services, rehabilitation services, and treatment for illness and injury in relation to primary care,

that has been certified under this Act or that is a party to an agreement filed pursuant to subsection (2) of Section 30 ^(a) and the certification of which has not been revoked, and including all members thereof;

- (b) "health care or community services employee" means a full-time or part-time employee who performs duties and functions that entitle that person to pay on a regular basis and who is a member of a health care or community service bargaining unit but, for greater certainty, does not include a consultant or independent contractor.

APPLICATION

Application of Part III

- 110** (1) This Part applies to all health care or community services bargaining units, all health care or community services employees, their employers and the unions representing the employees.

Application of Part I

- (2) Except where inconsistent with this Part, Part I ^(b) applies to all health care or community services bargaining units, all health care or community services employees, their employers and the unions representing the employees.

Dispute resolution for health care or community services employees and employers

- 111** (1) Health care or community services employees and their employers shall conduct interest arbitration as set out in this Part unless the parties mutually agree in writing to an alternative binding interest-arbitration process or unless a settlement is achieved through mediation pursuant to Section 116.
- (2) An award reached pursuant to an alternative binding interest-arbitration process agreed to pursuant to subsection (1) is deemed to be for the purpose of this Part an award of an interest-arbitration board pursuant to this Part.

Restriction on alteration of terms of employment

- 112** Notwithstanding Section 35 ^(c), the employer shall not, without consent by the certified or recognized bargaining agent or by the Board, increase or decrease rates of wages or alter any other term or condition of employment of employees in relation to whom notice to bargain has been given until
- (a) a new collective agreement has been concluded; or
 - (b) the bargaining agent and the employer or representatives authorized by them in that behalf have bargained collectively and have failed to conclude a collective agreement and an interest-arbitration board has made an award.

Notice of desire to submit to interest arbitration

- 113** Where
- (a) a conciliation officer fails to bring about an agreement between the parties engaged in collective bargaining; and
 - (b) the conciliation officer makes a report to the Minister,
- the employer or the union shall notify the other party in writing of its desire to submit the collective agreement to an interest-arbitration board composed of three persons unless the parties agree to submit the collective agreement to an interest-arbitration

board of one person.

Interest-arbitration board of three persons

- 114 (1) Where the interest-arbitration board referred to in Section 113 is to be composed of three persons, the party that gave notification pursuant to that Section shall, within seven days of the date of the agreement, give notice of its readiness to proceed pursuant to this subsection.
- (2) The party giving the notice referred to in subsection (1) shall in and with the notice give the name of a person to act as its nominee on the interest-arbitration board and request that the other party name a person to act as its nominee on the interest-arbitration board.
- (3) The party to whom notice is given pursuant to subsections (1) and (2) shall, within seven days of the receipt of such notice, appoint a person to be its nominee on the interest-arbitration board and shall, within those seven days, notify in writing the other party of the name of the person so appointed.
- (4) Where a party fails to appoint a member to the interest-arbitration board and give notice thereof as required by subsection (3), the Chairman of the Labour Relations Board or the Chairman's designate, on the application of the party who has appointed a member pursuant to subsection (2), shall, within seven days, appoint a person to act on the interest-arbitration board as the nominee of the party who has failed to appoint a member.
- (5) The two members appointed pursuant to subsections (2), (3) and (4) shall, within seven days after the day on which the second of them is appointed, appoint a third person to be a member and chair of the interest-arbitration board.
- (6) Where the two members fail or neglect to make an appointment as required by subsection (5), the Chairman of the Labour Relations Board or the Chairman's designate, on the application of either party, shall within seven days appoint a third person to be a member and chair of the interest-arbitration board.
- (7) The decision of a majority of the interest-arbitration board is the decision of the interest-arbitration board and, in the absence of a majority decision, the decision of the chair is the decision of the interest-arbitration board.

- (8) The employer shall pay the fees and expenses of the member appointed to the interest-arbitration board by or on behalf of the employer, the union shall pay the fees and expenses of the member appointed to the interest-arbitration board by or on behalf of the union, and the employer and the union shall each pay one half of the fees of, and expenses incurred by, the chair of the interest-arbitration board.

Interest-arbitration board of one person

- 115** (1) Where the employer and the union agree pursuant to Section 113 to appoint an interest-arbitration board composed of one person, the employer and the union shall, within ten days after delivery of the notification referred to in that Section, attempt to agree on a person satisfactory to both parties to be the interest-arbitration board and, if agreement is reached, that person is appointed as the interest-arbitration board.
- (2) Where the parties are unable to agree on a person to be the interest-arbitration board pursuant to subsection (1), either party may apply to the Chairman of the Labour Relations Board or Chairman's designate to appoint a person to be the interest-arbitration board and the Chairman of the Labour Relations Board or Chairman's designate shall appoint a person.
 - (3) The employer and the union shall each pay one half of the fees of, and expenses incurred by, an interest-arbitration board appointed pursuant to subsection (1) or (2).
 - (4) Where an interest-arbitration board is appointed pursuant to subsection (1) or (2), the person appointed is the chair for the purpose of subsection (5) of Section 119 and Section 120.

Mediation

- 116** (1) Before beginning the arbitration process, an interest-arbitration board appointed pursuant to Section 114 or 115 may seek to mediate a settlement between the parties and, upon the joint request of the parties or the request of the union, may conduct binding mediation.
- (2) A settlement reached pursuant to subsection (1) is deemed to be for the purpose of this Part an award of the interest-arbitration board.
 - (3) Where matters in dispute are not settled by mediation

pursuant to subsection (1), the interest-arbitration board shall decide the matters.

Procedure

117 (1) An interest-arbitration board appointed pursuant to Section 114 or 115

- (a) after hearing the parties, may determine the procedure to be followed during the arbitration including, for greater certainty, the selection of the dispute resolution model to be followed which may include but is not limited to mediation-arbitration or final offer selection; and
- (b) has, in relation to any proceedings before the arbitrator, the powers conferred on the Board, in relation to any proceedings before the Board, by subsections (7) and (8) of Section 16^(d),

and the parties to the proceedings may

- (c) appear and be heard and be represented by counsel; and
- (d) present evidence and call witnesses and examine or cross-examine all witnesses.

(2) A settlement reached pursuant to clause (1)(a) is deemed to be for the purpose of this Part an award of the interest-arbitration board.

Joining of matters in dispute

118 (1) Where there are matters in dispute between parties to be decided by more than one arbitration in accordance with this Part, the parties may agree in writing that the matters in dispute will be decided by one interest-arbitration board.

(2) For the purpose of Sections 111 to 117, the unions representing the health care or community services employees are one party and the employers of those employees are the other party.

(3) In an arbitration to which this Section applies, the interest-arbitration board may, in addition to the powers conferred upon an interest-arbitration board by this Part,

- (a) make a decision on matters of common dispute between all of the parties; and

- (b) refer matters not of common dispute to the parties concerned for further bargaining.
- (4) Where matters not of common dispute are not resolved by further collective bargaining under clause (3)(b), the interest-arbitration board shall decide the matters.

Powers and duties of interest-arbitration board and effect of award

- 119** (1) As soon as possible after conducting a hearing into the matters referred to it, the interest-arbitration board shall make an award and in its award deal with each item in dispute.
- (2) The award of the interest-arbitration board is deemed to include items settled by the parties but, for greater certainty, the interest-arbitration board shall not deal with items settled by the parties.
- ~~(3) The interest-arbitration board shall strive for an award that would replicate a settlement the parties would have reached had they been able to negotiate a collective agreement.~~
(this provision was deleted as a result of an objection made by NSGEU October 30, 2007)
- (4) An award of an interest-arbitration board is final and binding upon
- (a) the union and every employee in the unit on whose behalf it was bargaining collectively; and
 - (b) the employer,
- and the employer and the union shall give effect to it.
- (5) Every award of an interest-arbitration board must be signed by the chair of the board.
- (6) An interest-arbitration board retains jurisdiction over an arbitration after the decision where it has issued an award in order to clarify any ambiguities, uncertainties or omissions in that decision raised by any party to the proceedings.

Copy of decision to parties and file with Department

- 120** Where an interest-arbitration board renders an award, the chair of the interest-arbitration board shall forward a copy of the decision to the parties and file a copy with the Department of Environment

and Labour.

Prohibition of strike or lockout

- 121** (1) The right to strike of and the right to lock out health care or community services employees is hereby replaced with the processes set out in this Part.
- (2) Notwithstanding anything contained in this Act,
- (a) no health care or community services employee or member of a health care or community services bargaining unit has the right to strike; and
- (b) no employer shall lock out a health care or community services employee or member of a health care or community services bargaining unit.
- 2** Part III of Chapter 475, as enacted by this Act, applies to collective bargaining between a health care or community services bargaining unit as defined by that Part and an employer on and after the coming into force of this Act, whether the collective bargaining commenced before, on or after that day.
- 3** This Act comes into force on such day as the Governor in Council orders and declares by proclamation.

Explanation of References to other Trade Union Act provisions in Part III:

- (a) ss.30(2) Where voluntary recognition agreement between a trade union and an employer is filed with the Minister, the trade union is considered the certified bargaining agent for the employees.
- (b) Part I The general provisions of the Trade Union Act for industrial relations in the Province include provisions on definitions, negotiations, conciliation, preventative mediation, restrictions on strike and lockout, enforcement and penalties.
- (c) s. 35 General process for the commencement of collective bargaining after notice to the other party has been given.
- (d) ss.16(7) The Labour Relations Board and its members have the powers, privileges and immunities of a commissioner under the Public Inquiries

Act

ss.16(8) The Labour Relations Board may accept any evidence or information it deems fit and proper.