# A Guide to the Proposed Amendments to the *Trade Union Act*

## Health Care and Community Services Collective Bargaining

The Government of Nova Scotia is proposing changes to the *Trade Union Act*. If the House of Assembly approves these changes, employers and employees in health care and community services will have two new tools—interest arbitration and binding mediation—to resolve their collective bargaining disputes.

This guide explains what the new legislation will do and who will be affected by it. It also describes how the processes of interest arbitration and binding mediation will work.

### What will the proposed legislation do?

The amendments to the *Trade Union Act* will put in place a system of binding mediation and interest arbitration to settle collective bargaining disputes that involve health-care and community services workers and employers. This system will replace the existing rights of employees to strike and of employers to lock out their workers.

### Who will the legislation affect?

The legislation will affect employers and employees who work in the health-care and community services sectors. This includes acute care, long-term care, home support and home care, and continuing care. It will also affect ambulance services (air and ground transport).

This sector covers a wide range of facilities and programs. Some examples of these are

- hospitals
- health centres
- nursing homes
- continuing care facilities
- adult residential centres
- group homes
- homes for the aged
- emergency health services
- home support services
- addiction services
- public and mental health services

There are some 240 collective agreements in place in these sectors. They cover approximately 32,000 employees, who are represented by various unions.

### What are binding mediation and interest arbitration?

Binding mediation and interest arbitration are tools used to settle contract disputes. Mediators and arbitrators are independent, neutral third parties chosen by the parties and their representatives to help the union and the employer to reach a settlement.

Arbitration is a process where each party presents evidence and arguments to support their position in front of the arbitrator—a decision maker who then renders a decision that is binding on the parties.

In contrast, a mediator facilitates discussions between the union and employer without a formal hearing. Unlike ordinary mediation, binding mediation is a process where the mediator decides outstanding issues at the end of the mediation if the mediation has not resulted in a settlement.

The new collective agreement will include the issues agreed to between the union and employer, together with the issues resolved by the arbitrator or mediator. Under this model, strikes and lockouts are not allowed.

### What will collective bargaining look like once the changes come into effect?

A union and an employer who are renegotiating a collective agreement will use the process that is currently in place. In other words, they will meet face to face to discuss and negotiate each of their issues. If they cannot reach a settlement, either the employer or the union may ask the Minister of Labour to appoint a conciliator to help them reach a new collective agreement.

### What if the union and employer cannot reach an agreement?

Under the present system, if the union and employer cannot reach an agreement, the conciliator declares an impasse by filing a report with the Minister of Labour. The union and employer then have a 14-day period to make further attempts to settle the dispute. If they are unable to reach agreement, the union can give 48 hours of notice to strike and then legally start a work stoppage. Similarly, an employer can give 48 hours notice of their intention to lock out employees, although a lockout has not occurred in Nova Scotia in the health-care and community services sectors in many years.

Under the new legislation, if the conciliator has declared an impasse and the 14-day period has expired, neither the employer or union will be able to participate in a legal work stoppage. They will, however, have a number of options available to resolve their dispute.

### What options will the union and employer have for resolving their dispute?

Under the proposed legislation, if the union and employer are unable to achieve a settlement through negotiations, they will have the option of having their dispute resolved through a binding dispute resolution process of their own design. If they chose not to take that option or are unable to agree on that option, the proposed legislation will require the parties to take the matters in dispute to an interest arbitration board. Such a board will consist of three members, unless the parties agree to have their disputes resolved by a board consisting of a sole arbitrator. The parties may agree to the to have the board conduct binding mediation instead of binding arbitration, or union may opt for this on its own. If this option is not selected, the interest arbitration board will be required to begin the arbitration process.

## Who appoints the members of the interest arbitration board?

Where the parties opt for an interest arbitration board of three persons, the union and the employer will each select one person to represent them on the board. The union and the employer representatives then select a chair for the board.

Where the parties agree to proceed with a board consisting of a sole arbitrator, the arbitrator will be appointed by agreement of the parties.

If the appointments to an interest arbitration board are not made within time lines set down in the legislation, either the union or the employer can ask the Chair of the Labour Relations Board to make the appointments that have not been made. The Chair of the Labour Relations Board is a recognized expert in labour issues and is independent of government.

The parties will also have the option of voluntarily agreeing that one interest arbitration board can hear more than one dispute at a common hearing. In other words, whether the union and employer have been negotiating at separate tables for separate groups of employees or at one table for separate groups of employees, the union and employer can mutually agreed to have all the issues in dispute presented and resolved at one binding interest arbitration. This is intended to avoid delays and ensure consistency of decisions.

## Who pays for the mediator/interest arbitration board?

The employer and union share the costs of the fees and expenses of the mediator or interest arbitration board.

## What type of process does the mediator or interest arbitration board follow?

As stated above, once an interest arbitration board is appointed, the parties may jointly ask the board to conduct binding mediation or the union can on its own require the board to conduct binding mediation. If the interest arbitration board is asked to conduct binding mediation, it will mediate the dispute to see if can help the parties resolve their differences through a settlement. If the settlement is not reached, the board will then resolve the dispute on behalf of the parties.

Even if the parties do not choose binding mediation, they can ask the board to conduct non-binding mediation before starting the more formal arbitration process

A mediation process (binding or non-binding) may or may not include lawyers or labour experts appearing for the union and the employer. The committees for each party are normally involved, but there is no formal court-like process with witnesses and testimony.

If the parties do not choose to proceed with mediation, or if they do not opt for non-binding mediation, or if non-binding mediation is not successful, the interest arbitration board arbitration process will begin. The proposed legislation will leave the details of the arbitration process to the interest arbitration board. It will give two examples of models of arbitration that the board may follow: mediation-arbitration or final offer selection arbitration. The proposed legislation does,

however, guarantee the procedural rights of the parties, including the right to make a submission to the board as to the model of arbitration that should be followed.

In contrast to mediation, interest arbitration is a process where a neutral third party resolves a dispute on the basis of evidence and arguments presented by the parties and their representatives.

## What is included in an interest arbitration award?

If the employer and union reach an agreement through mediation, the written agreement signed by them is the award. It is binding upon them, so it cannot be changed.

If the interest arbitration board gives a decision through mediation, mediation-arbitration, or another interest arbitration process, then that decision is also an award that is binding upon the employer and the union.

The collective agreement will also include any issues that the union and employer agreed upon before going to mediation or arbitration.

If either the union or the employer is unclear about any part of the decision given by an interest arbitration board, the board will have the legal authority to clarify that decision. This will ensure that the union or the employer do not have to take further legal action or unduly delay the implementation of the decision.

## When will the legislation come into effect?

The government intends to introduce this proposed legislation during the fall session of the Legislature. The proposed legislation will come into effect if it is passed in the Legislature and is proclaimed by Order in Council.

It should be noted that these changes will apply to all health-care and community services bargaining taking place when the legislation comes into effect. This includes negotiations that began before that date.

## Where do I send comments on this legislation?

Send your comments to

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