



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

LABOUR ACT

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For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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LABOUR ACT

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LABOUR ACT

CHAPTER L-1

1. Definitions

In this Act

- (a) “**board**” means the Labour Relations Board established under section 3;
- (b) “**chief executive officer**” means the chief executive officer of the board appointed by the Minister under this Act;
- (c) “**Minister**” means the Minister of Justice and Public Safety and Attorney General. *R.S.P.E.I. 1974, Cap. L-1, s.1; 1986,c.5,s.2; 1992,c.18,s.43; 1993,c.29,s.4; 1997,c.20,s.3; 2000,c.5,s.3; 2009,c.73,s.2; 2010,c.31,s.3; 2012,c.17,s.2; 2015,c.28,s.3.*

MINISTER

2. Administration of Act

The Minister shall be charged with the administration of this Act. *R.S.P.E.I. 1974, Cap. L-1, s.2; 1986,c.5,s.2; 1993,c.29,s.4; 1997,c.20,s.3; 2000,c.5,s.3; 2009,c.73,s.2.*

LABOUR RELATIONS BOARD

3. Labour Relations Board

- (1) The Labour Relations Board (Prince Edward Island) is continued.

Composition

- (2) The Board shall be composed of a chairman, one or more vice-chairmen and as many members, equal in number, representative of employers and employees respectively as the Lieutenant Governor in Council may determine, all of whom shall be appointed by the Lieutenant Governor in Council.

Term of office

- (2.1) The chairman, vice-chairman and members of the board shall be appointed for a term not exceeding three years as may be specified in the instrument of appointment and are eligible for reappointment.

Deputy chairman

- (3) The Lieutenant Governor in Council shall designate one of the vice-chairmen to be deputy chairman.

Panels of board, establishment and jurisdiction

- (4) The chairman may establish one or more panels of the board and in respect of matters referred to, a panel by the chairman, or coming before it under the rules of the board made under this Act, the panel has the power and authority of the board and two or more panels may proceed with separate matters at the same time.

Matters referable to panel

- (5) The chairman may refer any matter that is before the board to a panel and may refer any matter that is before a panel to the board or another panel.

Panel composition

- (6) A panel of the board shall consist of the chairman or a vice-chairman and an equal number of employer and employee representatives appointed by the chairman.

Oaths

- (7) Each member of the board shall, before acting as such, take and subscribe before a judge of the Supreme Court and shall file with the Minister an oath or affirmation of office in the following form:

I do solemnly swear (affirm) that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform the office of member of the Labour Relations Board (Prince Edward Island) and will not, except in the discharge of my duties, disclose to any person any of the evidence or other matter brought before the said board. So help me God.

Quorum

- (8) A majority of the members of the board or panel constitute a quorum.

Voting

- (9) A decision of the majority of the members of the board or a panel present and constituting a quorum is the decision of the board and if the votes are equal, the chairman shall have the casting vote.

Powers of board

- (10) The board and each member thereof have the powers of a commissioner under the *Public Inquiries Act* R.S.P.E.I. 1988, Cap. P-31.

Evidence before board

- (11) The board may receive and accept such evidence and information on oath, affidavit or otherwise as in its discretion it may consider fit and proper, whether admissible as evidence in a court of law or not.

Procedure of board

- (12) The board shall determine its own practice and procedure but shall give full opportunity to all interested persons to present evidence and to make representations and the board may, subject to the approval of the Lieutenant Governor in Council, make rules governing its practice and procedure and the exercise of its powers and prescribing such forms as are considered advisable and, without limiting the generality of the foregoing, it may prescribe what evidence shall constitute proof that an employee wishes a trade union to be certified as bargaining agent on his behalf.



Use of records of trade unions by board, disclosure not compellable

- (13) The records of a trade union relating to membership and any records that may disclose whether any person is or is not a member of a trade union or does or does not wish to be represented by a trade union filed with the board or produced in any proceeding before the board shall be for the exclusive use of the board and its officers and shall not, except with the consent of the board, be disclosed, and no person shall, except with the consent of the board, be compelled to disclose whether any person is or is not a member of a trade union or does or does not desire to be represented by a trade union, and not so as to restrict the generality of the foregoing, such records shall not be produced or disclosed in any proceedings under the *Judicial Review Act R.S.P.E.I. 1988, Cap. J-3*.

Chief executive officer

- (14) The Minister may appoint the chief executive officer who shall carry out the duties prescribed by the Minister and any other duties imposed on him by the board or otherwise under this Act.

Remuneration of members of the board

- (15) The members of the board shall be paid such remuneration as may be fixed by the Lieutenant Governor in Council and such actual and reasonable expenses as may be incurred by them in the discharge of their duties.

Conflict of interest

- (16) A panel of the board is not deemed to be improperly constituted for the sole reason that a member of the panel has a matter before another panel of the board, or a matter arises before another panel of the board affecting the interest of that member or any employer or employee organization he represents.

Validity of action by panel where member ceases to act

- (17) Notwithstanding subsection (6), where a member ceases to act as a member of a panel, the chairman may

- (a) appoint another member to act in his place; or
- (b) direct the remaining members to continue to act and determine the issue,

and the panel, subject to subsection (8), shall not be deemed to be improperly constituted nor shall its determination of the issue be challenged or reviewed on the ground that the panel was improperly constituted as a result of the cessation of the member to act. *R.S.P.E.I. 1974, Cap. L-1, s.3; 1974(2nd), c.33, s.2; 1975, c.78, s.3; 1988, c.36, s.1; 1994, c.32, s.1,18; 2000,c.7,s.1.*

4. Decision of board final

- (1) The board has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it, and the action or decision of the board thereon is final and conclusive for all purposes, but nevertheless the board may at any time, if it considers it advisable to do so, reconsider any decision, interim order, order, direction, declaration or ruling made by it and vary or revoke any such decision, order, direction, declaration or ruling.

Decisions, orders etc., of board not reviewable by court

- (2) No decision, interim order, order, direction, declaration or ruling of the board shall be questioned or reviewed in any court, and no order shall be made or process entered, or proceedings taken in any court, whether by way of an application for judicial review, or otherwise, to question, review, prohibit or restrain the board or any of its proceedings.

Stated case

- (3) The board may of its own motion state a case in writing for the opinion of the Court of Appeal upon any question that, in the opinion of the board, is a question of law and the court shall hear and determine the question of law arising thereon and remit the matter to the board, with the opinion of the court thereon; no costs shall be awarded in a case stated under this section.

Failure to comply with order, enforcement

- (4) Where any person, union or employers' organization fails to comply with a decision, order, direction, declaration or ruling of the board or any panel of the board, any person, union or employers' organization affected thereby may, after the expiration of fourteen days from the date of service of the order on the person, union or employers' organization required to comply or the date provided for compliance by the board or panel, whichever is later, notify the board in writing of the failure to comply, and thereupon the board shall file in the office of the Registrar of the Court of Appeal and the Supreme Court, a copy of the decision, order, direction, declaration or ruling and thereupon it may be enforced in the same manner, to the same extent and with the same priorities as a judgment of that court may be enforced. *R.S.P.E.I. 1974, Cap. L-1, s.4; 1994, c.32, s.2; 2008, c.20, s.72(53).*

5. Clerical assistance

The Minister shall provide the board with such clerical and other staff as the Minister considers necessary for the performance of its duties, and shall fix their remuneration. *R.S.P.E.I. 1974, Cap. L-1, s.5.*

6. Copy of document as evidence

- (1) The production in a court of a document purporting to be or to contain a copy of a decision, determination, report, interim order, order, direction, declaration or ruling of the board or of a conciliation officer, a conciliation board, a mediator, an arbitrator or an arbitration board appointed or constituted pursuant to this Act and purporting to be signed by a member of the board or its chief executive officer, or the conciliation officer, the chairman of the conciliation board, the mediator, the arbitrator or the chairman of the arbitration board, as the case may be, is *prima facie* proof of such document without proof of the appointment, authority or signature of the person who signed the document.

Certificate by Minister or deputy *re* report, request or notice, as evidence

- (2) A certificate purporting to be signed by the Minister or his deputy or by an official in his department stating that a report, request, or notice was or was not received or given by the Minister pursuant to this Act, and if so received or given, the date upon which it was so received or given shall be *prima facie* evidence of the facts stated therein without proof of the signature or of the official character of the person appearing to have signed the same. *R.S.P.E.I. 1974, Cap. L-1, s.6.*

PART I — INDUSTRIAL RELATIONS

7. Definitions

- (1) In this Part
- (a) “**bargaining agent**” means a trade union that acts on behalf of employees
- (i) in collective bargaining, or



- (ii) as a party to a collective agreement with their employer,
and includes a council of trade unions that has been vested with appropriate authority by any of its constituent unions to enable it to discharge the responsibilities of a bargaining agent;
- (b) “**certified bargaining agent**” means a bargaining agent that has been certified under this Act and the certification of which has not been revoked;
- (c) “**collective agreement**” means an agreement in writing between an employer or an employers’ organization acting on behalf of an employer, on the one hand, and a bargaining agent of his employees, on behalf of the employees, on the other hand, containing terms and conditions of employment including rates of pay and hours of work;
- (d) “**collective bargaining**” means negotiation with a view to the conclusion of a collective agreement or the renewal or revision thereof, as the case may be;
- (e) “**conciliation board**” means a board of conciliation appointed by the Minister in accordance with section 27;
- (f) “**conciliation officer**” means a person instructed by the Minister under section 25;
- (g) “**dispute**” or “**industrial dispute**” means any dispute or difference between an employer and one or more of his employees or a bargaining agent acting on behalf of his employees, as to matters or things affecting or relating to terms or conditions of employment;
- (h) “**employee**” means a person employed to do skilled or unskilled manual, clerical or technical work, and includes a member of a police department, a person employed as a security police officer by the University of Prince Edward Island and an instructing officer employed by the Atlantic Police Academy, but does not include persons referred to in subsection (2);
- (i) “**employer**” means a person, firm or corporation employing more than one employee but does not include Her Majesty or any person, corporation, board, department or commission acting for or on behalf or as an agent of Her Majesty; except that the Lieutenant Governor in Council may by order-in-council declare any person, corporation, board, department or commission acting for or on behalf of or as an agent of Her Majesty to be an employer within the meaning of this Part with respect to any group of employees designated in the order-in-council, whereupon with respect to the group so designated, the person, corporation, board, department or commission, as the case may be, shall be such an employer until the order-in-council is rescinded;
- (j) “**employers’ organization**” means an organization of employers formed for purposes including the regulation of relations and collective bargaining between employers and employees;
- (k) “**lockout**” includes the closing of a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of his employees, done to compel or induce his employees, or to aid another employer to compel or induce his employees, to refrain from exercising any rights or privileges under this Part or to agree to terms or conditions of employment or changes of terms or conditions of employment;
- (l) “**strike**” includes a cessation of work or refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding or a slow down or other concerted activity on the part of the employees designed to restrict or limit output or service;

- (m) “**trade union**” or “**union**” means any organization of employees formed for purposes that include the regulation of relations and collective bargaining between employees and employers and includes a council of trade unions that has been vested with appropriate authority by any of its constituent unions to enable it to discharge the responsibilities of a bargaining agent;
- (n) “**unit**” means a group of employees whether it is an employer unit or a plant unit or a subdivision of either.

Persons not deemed to be an employee

- (2) For the purposes of this Part, no person shall be deemed to be an employee
 - (a) who is a member of the architectural, dental, engineering, legal or medical profession entitled to practice in Prince Edward Island and employed in a professional capacity, and instructional personnel as defined in the *Education Act* R.S.P.E.I. 1988, Cap. E-.02; or
 - (b) who, in the opinion of the board, exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations.

Associated businesses, individuals etc., treated by board as one employer

- (3) Where, in the opinion of the board, associated or related activities or businesses are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination thereof, under common control or direction, the board may treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Part. *R.S.P.E.I. 1974, Cap. L-1, s.7; 1974(2nd), c.33, s.1; 1980, c.31, s.1; 1988, c.36, s.2; 2006,c.16,s.63(6)(a); 2016,c.6,s.124(2).*

RIGHTS OF EMPLOYERS AND EMPLOYEES

8. Employees

For the avoidance of doubt it is declared that following are employees for the purposes of this Part:

- (a) nurses;
- (b) persons employed by a hospital as defined in the *Hospitals Act* R.S.P.E.I. 1988, Cap. H-10;
- (c) non-instructional personnel as defined in the *Education Act*;
- (d) members of a police department, persons employed as security police officers by the University of Prince Edward Island and instructing officers employed by the Atlantic Police Academy. *1987, c.38, s.1; 1988, c.36, s.3; 1994, c.32, s.4; 2006,c.16,s.63(6)(b); 2016,c.6,s.124(3).*

9. Right to join trade union

- (1) Every employee has the right to be a member of a trade union and to participate in the lawful activities thereof.

Effect of lockout or strike on employee

- (2) No person ceases to be an employee within the meaning of this Part by reason only of his ceasing to work as the result of a lockout or lawful strike or by reason only of dismissal contrary to this Part or to a collective agreement.



Reinstatement of employees

- (3) Where employees go on strike or are locked out in circumstances permitted by section 41, they are entitled, subject to subsection (4), upon the termination of the strike or lockout to return to and be reinstated in their employment without discrimination and subject to the terms and conditions of employment applicable on the termination of the strike or lockout.

Exceptions

- (4) An employer is not obliged under subsection (3) to reinstate particular employees where the business of the employer has declined with the result that the employer
- (a) no longer has persons engaged in performing work of the same or similar nature to work which those employees performed prior to the strike or lockout; or
 - (b) has suspended or discontinued the operations performed by those employees prior to the strike or lockout,

but if the employer resumes those operations, he shall first reinstate those employees.

Replacement of employees

- (5) Replacement persons engaged by an employer to fill the positions of employees of the employer who are on strike or are locked out, in circumstances permitted by section 41, shall be considered temporary employees for the duration of the strike or lockout, and upon the termination of the strike or lockout, the employment of the persons engaged to replace the employees shall, without notice, be deemed to be terminated, subject only to the terms and conditions of any agreement relating to the return to work of the striking or locked out employees.

Right to join employers' organization

- (6) Every employer has the right to be a member of an employers' organization and to participate in the lawful activities thereof.

Certain rights of employer not affected

- (7) Nothing in this Part restricts or interferes with the right of an employer to suspend, transfer, lay off or discharge employees for just cause.

Certain employer freedoms retained

- (8) Nothing in this Part shall be deemed to deprive an employer of his freedom
- (a) to express his views on collective bargaining, or the terms and conditions of employment, so long as he does not use coercion, intimidation, threats, or undue influence;
 - (b) to permit an employee or the bargaining committee or officers or other representatives of a trade union to confer with him or to attend to the business of a trade union without deduction of wages for loss of time so occupied;
 - (c) to provide free transportation to representatives of a trade union for purposes of collective bargaining; or
 - (d) to permit a trade union the use of the employers' premises for the purposes of the trade union.

Granting preference in collective agreement

- (9) Nothing in this Part prohibits the parties to a collective agreement from inserting in the collective agreement a provision granting preference of employment to members of a specified trade union or requiring as a condition of employment membership in or the payment of dues or contributions to a specified trade union but no bargaining agent shall

require an employer to discharge an employee for non-membership in such trade union, if membership is not available to the employee on the same terms and conditions generally applicable to other members. *R.S.P.E.I. 1974, Cap. L-1, s.8; 1987, c.39, s.1; 1994, c.32, s.5.*

UNFAIR LABOUR PRACTICES

10. Employer unfair labour practices

- (1) No employer, employers' organization or an agent or any other person acting on behalf of an employer or employers' organization shall
- (a) interfere with, restrain or coerce an employee in the exercise of any right conferred by this Act;
 - (b) participate or interfere with the formation, selection or administration of a trade union or other labour organization or the representation of employees by a trade union or other labour organization; or contribute financial or other support to such trade union or labour organization;
 - (c) suspend, transfer, refuse to transfer, lay-off, discharge, or change the status of an employee or alter any term or condition of employment, or use coercion, intimidation, threats or undue influence, or otherwise discriminate against any employee in regard to employment or any term or condition of employment, because the employee is a member or officer of a trade union or has applied for membership in a trade union;
 - (d) refuse to employ any person because such person is a member or officer of a trade union or has applied for membership in a trade union or require as a condition of employment that any person shall abstain from joining or assisting or being active in any trade union or from exercising any right provided by this Part;
 - (e) fail or refuse to bargain collectively in accordance with this Act;
 - (f) call, authorize, counsel, procure, support, encourage or engage in a lockout except as permitted by section 41.

Prohibitions *re* employees, trade unions etc.

- (2) No employee, trade union or person acting on behalf of a trade union shall
- (a) interfere with the formation, selection or administration of an employers' organization or the representation of employers by an employers' organization, or by intimidation or any other kind of threat or action, seek to compel an employer to refrain from becoming or to cease to be a member, or officer or representative of an employers' organization;
 - (b) except with the consent of the employer, attempt at the employers' place of employment during working hours to persuade an employee of the employer to join a trade union;
 - (c) fail or refuse to bargain collectively in accordance with this Act;
 - (d) call, authorize, counsel, procure, support, encourage or engage in a strike except as permitted by section 41;
 - (e) use coercion or intimidation of any kind with a view to encouraging or discouraging membership in or activity in or for a trade union or labour organization. *R.S.P.E.I. 1974, Cap. L-1, s.9; 1990, c.27, s.1; 1994, c.32, s.18.*



11. Unfair labour practices complaint

- (1) Where a complaint in writing is made to the board that an employer, employers' organization, trade union or other person is committing or has committed an act prohibited by section 10 or otherwise prohibited under this Act, the chief executive officer or an officer of the Department of Justice and Public Safety, appointed by him shall inquire into the complaint and endeavour to effect a settlement of the matter complained of.

Report of chief executive officer

- (2) The chief executive officer or the officer appointed by him shall report the results of his inquiry and endeavours to the board.

Inquiry by board; jurisdiction to make certain orders

- (3) If the chief executive officer or other officer appointed by him, as the case may be, is unable to effect a settlement of the matter complained of, the board shall conduct a hearing on the complaint, and, if the board is satisfied that an employer, employers' organization, trade union or other person is committing or has committed an act prohibited by this Act, the board, shall, by order, make such award, give such direction, or take such other action as the board considers just and necessary in the circumstances and, without restricting the generality of the foregoing, may, by such order or subsequent order,
- (a) direct the employer, employers' organization, trade union or other person to cease doing the act and to rectify in such manner as the board considers just any violation of this Act;
 - (b) direct an employer to pay to an employee a sum equal to the wages, salary or other remuneration lost by the employee by reason of the employer's violation of this Act;
 - (c) direct an employer to reinstate an employee in his employ at such date as in the opinion of the board is just and proper in the circumstances in the position that the employee would have held but for a suspension, transfer, refusal to transfer, lay off, discharge or change of status of the employee done or made by the employer contrary to this Act;
 - (d) direct an employer to employ a person at such date as in the opinion of the board is just and proper in the circumstances in the position that the person would have held but for the refusal of such employer to employ such person contrary to this Act.

Method of service of order

- (4) The board may in any order made under subsection (3) declare the manner of service of such order upon any employer, employers' organization, trade union or other person to whom such order is directed.

Burden of proof on person charged

- (5) Where any such complaint arises out of the suspension, transfer, refusal to transfer, lay off, discharge or change of status of an employee or the refusal to employ or *re-hire* any person, the burden of proof that the suspension, transfer, refusal to transfer, lay off, discharge, change of status, or refusal to employ or *re-hire*, was for just cause and not in violation of this Act, is upon the person charged. *R.S.P.E.I. 1974, Cap. L-1, s.10; 1986, c.5, s.2; 1987, c.6, s.13; 1988, c.36, s.4; 1990, c.27, s.2; 1993, c.29, s.4; 1994, c.32, s.6,18; 2000,c.5,s.3; 2009,c.73,s.2; 2010,c.31,s.3; 2012,c.17,s.2; 2015,c.28,s.3.*

APPLICATION FOR CERTIFICATION OF BARGAINING AGENT

12. Application by trade union for certification as bargaining agent

- (1) A trade union claiming that a majority of employees of an employer in a unit that is appropriate for collective bargaining wish that the trade union be certified as bargaining agent on their behalf may, subject to the rules of the board and in accordance with this section, apply to the board to be certified as bargaining agent of the employees in the unit.

Where no union certified, time for application

- (2) Where no trade union is certified as bargaining agent for any of the employees in the unit and the employees are not bound by a collective agreement, the application, subject to subsection (7), may be made at any time.

Application where union certified, but no collective agreement in force

- (3) Where a trade union is certified as bargaining agent for any of the employees in the unit, but no collective agreement binding on such employees has been entered into, the application may be made at any time after ten months from the date of certification, but not before, without the consent of the board.

Application where collective agreement for term of 2 years or less in force

- (4) Where a collective agreement binding on any of the employees in the unit is in force and the agreement is for a term of not more than two years, the application may be made only after the commencement of the last two months of the term of the agreement.

Application where collective agreement for more than two years

- (5) Where a collective agreement is in force and the agreement is for a term of more than two years, the application may be made only after the commencement of the twenty-third month of the term and before the commencement of the twenty-fifth month of the term and during the two-month period immediately preceding the end of each year of the term that the agreement continues to operate thereafter or after the commencement of the last two months of the term, as the case may be.

Application where successive terms of collective agreement

- (6) Where a collective agreement referred to in subsections (4) or (5) provides that it will continue to operate for a further term or successive terms if neither party gives to the other notice of termination or of its desire to bargain with a view to the renewal of the agreement or to the making of a new agreement, the application may be made during the further term or successive terms only during the last two months of each year of such further term or successive terms, or after the commencement of the last two months of such term or successive terms that it so continues to operate, as the case may be.

Application where notice to bargain given

- (7) Where a collective agreement binding on any of the employees in the unit has expired and notice has been given pursuant to section 23, but a new collective agreement has not been entered into, no application for certification as bargaining agent of any of the employees in the bargaining unit defined in the collective agreement, whether the bargaining agent named in such collective agreement is or is not certified, shall be made until ten months after the expiration of the said agreement, except with the consent of the board.



Application during strike or lockout, consent required

- (8) Notwithstanding subsection (7), no such application shall be made without the consent of the board during a lawful strike or lockout. *R.S.P.E.I. 1974, Cap. L-1, s.11.*

13. Board to determine whether unit appropriate for collective bargaining

- (1) Where a trade union makes application for certification under this Part, the board shall determine whether the unit in respect of which the application is made is appropriate for collective bargaining.

Board may include or exclude employees from unit

- (2) The board may, before certification, either to make the unit appropriate for collective bargaining or for other good reason, include additional employees in or exclude employees from the unit.

Examination by board; evidence to determine employees' wishes

- (3) For the purposes of subsections (1) and (2) and for the purpose of determining whether a majority of the employees in the unit wish the applicant trade union to be certified as bargaining agent of such employees, the board shall
- (a) make, or cause to be made, such examination of records or other inquiries and hold such hearings as it considers necessary;
 - (b) take such other steps as it considers appropriate to determine the wishes of the employees in the unit as to the selection of a bargaining agent to act on their behalf including, whenever the board considers it necessary, the taking of a representation vote of such employees.

Representation vote

- (4) Where the board has taken a representation vote under this Act and a majority of eligible employees in the unit appropriate for collective bargaining vote in favour of the applicant union, the board may determine that a majority of the employees in the unit wish the applicant union to be certified as bargaining agent of such employees.

Certification of bargaining agent

- (5) If the board is satisfied that a majority of the employees in a unit appropriate for collective bargaining wish the applicant trade union to be certified as bargaining agent of such employees, the board shall certify the trade union as the bargaining agent of the employees in that unit.

Factors in determining what number constitutes a majority

- (6) In determining what number of employees constitute a majority of the employees of a unit pursuant to subsection (5), the board may consider any increase in the number of employees in the bargaining unit after the application was made, and the board may consider any anticipated increase in the number of employees in the bargaining unit.

Dismissal of application

- (7) If the board is not satisfied that the applicant trade union is entitled to be certified under this section, it shall dismiss the application and may designate the length of time that must elapse before the same applicant may make a new application.

Eligible employees

- (8) In determining the number of eligible employees for the purpose of subsection (4), employees who do not cast their ballots shall not be counted as eligible employees. *R.S.P.E.I. 1974, Cap. L-1, s.12; 1988, c.36, s.1.*

14. Pre-hearing representation vote

- (1) Upon an application for certification, the applicant trade union may request that a prehearing representation vote be taken and the board may direct that a representation vote be taken whereupon the board shall determine the list of employees eligible to vote.

Effect of vote

- (2) A representation vote taken under this section shall have the same effect as a representation vote taken by the board pursuant to section 13. *R.S.P.E.I. 1974, Cap. L-1, s.13.*

15. Board not to certify where interference or discrimination

The board shall not certify a trade union if any employer or any employers' organization has participated in its formation or administration or has contributed financial or other support to it or if it discriminates against any person in relation to race, religion, creed, colour, sex, marital status, ethnic or national origin, age, physical or mental disability or political belief of any individual or class of individuals. *1994, c.32, s.7; 2018, c.30, s.3(2).*

16. No alteration of wages or conditions while negotiations pending

Where an application is made under this Part for the certification of a trade union as bargaining agent of employees in a unit, the employer shall not, without the consent of the board, increase or decrease rates of pay or wages or alter any other term or condition of employment of any employees in the unit until the board has given its decision on the application and, where the board certifies a trade union as bargaining agent, until section 22 has been complied with. *R.S.P.E.I. 1974, Cap. L-1, s.15.*

17. Effect of certification

Where a trade union is certified under this Part as the bargaining agent of the employees in a unit,

- (a) the trade union shall immediately replace any other bargaining agent of employees in the unit and shall have exclusive authority to bargain collectively on behalf of employees in the unit and to bind them by a collective agreement;
- (b) if another trade union had previously been certified as bargaining agent of any employees in the unit, the certification of such trade union shall be deemed to be revoked in respect of such employees; and
- (c) if, at the time of certification, a collective agreement binding on any of the employees in the unit is in force, the trade union shall be substituted as a party to the agreement for such employees in place of the bargaining agent that is a party to the agreement. *R.S.P.E.I. 1974, Cap. L-1, s.17.*

18. Amendment of certification order

An application may be made to the board by a bargaining agent or an employer named in a certification order to amend such order to



- (a) change the name of the union or employer where the name of the union or employer has been changed;
- (b) include specific additional classifications of employees in the unit;
- (c) exclude specific classifications of employees from the unit; or
- (d) combine previous certification orders into one order. *R.S.P.E.I. 1974, Cap. L-1, s.17.*

VOLUNTARY RECOGNITION

19. Voluntary recognition agreement

- (1) Where a trade union purports to represent employees of an employer and intends to bargain collectively on behalf of the employees, the trade union and employer may make and enter into a voluntary recognition agreement in writing, that may be part of a collective voluntary recognition agreement, whereby
 - (a) the employer recognizes the trade union as the exclusive bargaining agent for the employees; and
 - (b) the unit of employees to which the voluntary recognition agreement extends is defined.

Effect of filing voluntary recognition agreement

- (2) Subject to subsection (3), when a voluntary recognition agreement made pursuant to subsection (1) is filed with the board, this Act applies as though the trade union was the certified bargaining agent for the employees in the unit defined by the voluntary recognition agreement at the time the voluntary recognition agreement was filed.

Circumstances where section not applicable

- (3) This section does not apply if
 - (a) the trade union that is a party to the voluntary recognition agreement does not meet the requirements of section 15;
 - (b) at the time the voluntary recognition agreement is filed, another trade union
 - (i) has pursuant to this section acquired bargaining rights on behalf of any of the employees to whom the voluntary recognition agreement extends, or
 - (ii) is certified as or has applied to the board for certification as bargaining agent for any of the employees to whom the voluntary recognition agreement extends; or
 - (c) the trade union does not represent a majority of the employees in the unit defined by the voluntary recognition agreement, but the trade union is deemed to have represented a majority of those employees at all relevant times when the employer has posted a copy of the voluntary recognition agreement made pursuant to subsection (1) in a conspicuous place or places upon the premises of the employer at which the voluntary recognition agreement is most likely to come to the attention of the employees and thirty days have elapsed from the date of posting.

Board to resolve questions

- (4) If any question arises whether a trade union represents or represented a majority of employees in the unit defined by a voluntary recognition agreement made pursuant to this section, the board, upon application, shall decide the question and any related question as though the question had arisen in a certification proceeding before the board.

Revocation provisions apply

- (5) The provisions of this Act relating to revocation of certification of a trade union as bargaining agent apply to a trade union that is a party to a voluntary recognition agreement filed with the board and that has the status of a certified bargaining agent by virtue of subsection (2).
R.S.P.E.I. 1974, Cap. L-1, s.18; 1994, c.32, s.8.

REVOCATION OF CERTIFICATION

20. Application by employer or employee for revocation of certification

- (1) An employer or a trade union named in a certification order or any employee in a unit for which a trade union has been certified as bargaining agent by such certification order may apply to the board for the revocation of such certification on the ground that a majority of the employees in such unit no longer wish the trade union to act as bargaining agent on their behalf.

Power of board to revoke certification

- (2) If the board is satisfied that the majority of the employees in such unit no longer wish the trade union to act as bargaining agent on their behalf, the board shall revoke the certification of the trade union.

Effect of revocation

- (3) Where the certification of a bargaining agent is revoked under this section, the employer is not required to bargain collectively with the bargaining agent, and a collective agreement in effect at the time of the revocation of the certification of the bargaining agent is void and of no effect, but this does not prevent the bargaining agent from making an application under section 12.

Application of ss 12 and 13

- (4) Sections 12 and 13 apply with the necessary changes to applications under this section.
R.S.P.E.I. 1974, Cap. L-1, s.19.

NOTICE TO NEGOTIATE

21. Either party may give notice

Where the board certifies a trade union as bargaining agent of employees in a unit and no collective agreement with their employer binding on such employees is in force,

- (a) the bargaining agent may, on behalf of the employees in the unit, by notice, require their employer to commence collective bargaining; or
(b) the employer or an employer's organization representing the employer, may by notice, require the bargaining agent to commence collective bargaining,

with a view to the conclusion of a collective agreement. *R.S.P.E.I. 1974, Cap. L-1, s.20.*



COLLECTIVE BARGAINING

22. No collective agreement in force, commencement of collective bargaining and no alteration of wages while negotiations pending

Where notice to commence collective bargaining has been given under section 21

- (a) the bargaining agent and the employer, or an employer's organization representing the employer shall, without delay, but in any case within twenty days after the notice was given or such further time as the parties may agree, meet and commence or cause authorized representatives on their behalf to meet and commence to bargain collectively and shall make every reasonable effort to conclude a collective agreement; and
- (b) the employer shall not, without the consent of the bargaining agent of the employees affected, increase or decrease rates of wages or alter any other term or condition of employment of employees in the unit for which the bargaining agent is certified until
 - (i) a collective agreement has been concluded, or
 - (ii) the bargaining agent and the employer, or representatives authorized by them on their behalf, have bargained collectively and have failed to conclude a collective agreement and either
 - (A) a conciliation officer has been unable to bring about an agreement between the parties and fourteen days have elapsed from the date on which the report of the conciliation officer was filed with the Minister and a conciliation board or mediator has not been appointed under section 27 or section 34, or
 - (B) a conciliation board or mediator has been appointed and has been unable to bring about an agreement between the parties and seven days have elapsed from the date on which the report of the conciliation board or mediator was filed with the Minister. *R.S.P.E.I. 1974, Cap. L-1, s.21.*

23. Notice to bargain for new agreement

Either party to a collective agreement may by notice given to the other party within the time prescribed by the agreement for so doing or, if the agreement does not contain such provision, then at least two months preceding the expiry date of the agreement, require the other party to the agreement to commence collective bargaining with a view to the conclusion of a new collective agreement. *R.S.P.E.I. 1974, Cap. L-1, s.22.*

24. Collective agreement in force, commencement of collective bargaining for new agreement; no alteration of wages or conditions while negotiations pending

Where a party to a collective agreement has given notice under section 23 to the other party to the agreement,

- (a) the parties shall, without delay, but in any case within twenty days after the notice was given, or such further time as the parties may agree, commence collective bargaining and shall make every effort to conclude a new collective agreement;
- (b) the employer shall not, without the consent of the bargaining agent of the employees affected, increase or decrease rates of wages or alter any other term or condition of employment in effect immediately prior to the expiry date of the collective agreement until

- (i) a new collective agreement has been concluded, or
- (ii) the bargaining agent and the employer, or representatives authorized by them on their behalf, have bargained collectively and have failed to conclude a new collective agreement and either
 - (A) a conciliation officer has been unable to bring about an agreement between the parties and fourteen days have elapsed from the date on which the report of the conciliation officer was filed with the Minister and a conciliation board or mediator has not been appointed under section 27 or section 34, or
 - (B) a conciliation board or mediator has been appointed and has been unable to bring about an agreement between the parties and seven days have elapsed from the date on which the report of the conciliation board or mediator was filed with the Minister. *R.S.P.E.I. 1974, Cap. L-1, s.23.*

CONCILIATION AND MEDIATION

25. Appointment of conciliation officer

Where notice to commence collective bargaining has been given under this Part and

- (a) collective bargaining has not commenced within the time prescribed by this Part;
- (b) collective bargaining has commenced and either party thereto requests the Minister in writing to instruct a conciliation officer to confer with the parties thereto to assist them to conclude a collective agreement or a renewal or revision thereof and the request is accompanied by a statement of the difficulties, if any, that have been encountered before the commencement or in the course of the collective bargaining; or
- (c) in any other case in which in the opinion of the Minister it is advisable to do so,

the Minister may instruct a conciliation officer to endeavour to bring about agreement between the parties, and after instruction to bring about agreement between the parties, the conciliation officer shall forthwith fix the time and place of a meeting between the parties and shall give the parties reasonable notice of the meeting. *R.S.P.E.I. 1974, Cap. L-1, s.24; 1975, c.17, s.1.*

26. Report of conciliation officer

Where a conciliation officer has, under this Part, been instructed to confer with parties engaged in collective bargaining, he shall, within ten days of his first meeting with the parties after being so instructed or within such longer period as the Minister may allow, make a report to the Minister on

- (a) the matters, if any, upon which the parties have agreed;
- (b) the matters, if any, upon which the parties cannot agree; and
- (c) the advisability of appointing a conciliation board or mediator to endeavour to bring about an agreement. *R.S.P.E.I. 1974, Cap. L-1, s.25; 1975, c.17, s.1.*

27. Appointment of conciliation board

Where a conciliation officer fails to bring about an agreement between parties engaged in collective bargaining, the Minister may appoint a conciliation board of three members for such purpose. *R.S.P.E.I. 1974, Cap. L-1, s.26.*



28. Constitution of conciliation board

- (1) Where the Minister has decided to appoint a conciliation board, he shall forthwith, by notice in writing, require each of the parties, within seven days after receipt by the party of the notice, to nominate one person to be a member of the conciliation board, and upon receipt of the nomination the Minister shall appoint such person a member of the conciliation board.

Idem

- (2) If either of the parties fails or neglects to nominate a person within seven days after receipt of the notice, the Minister shall appoint as a member of the conciliation board, a person he considers fit for such purpose, and who is ready and willing to act, and such member shall be deemed to be appointed on the nomination of the said party.

Appointment of chairman

- (3) The two members appointed under subsection (1) or (2) shall, within five days after the day on which the second of them is appointed, nominate a third person, who is ready and willing to act, to be a member and chairman of the conciliation board, and the Minister shall appoint such person a member and chairman of the conciliation board.

Idem

- (4) If the two members appointed under subsection (1) or (2) fail or neglect to make a nomination within five days after the appointment of the second such member, the Minister shall forthwith appoint as the third member and chairman of the conciliation board, a person whom he considers fit for such purpose, and who is ready and willing to act.

Notice to parties

- (5) When the conciliation board has been appointed, the Minister shall forthwith notify the parties of the names of the members of the board.

Conclusive presumption board established in accordance with Act

- (6) Where the Minister has given notice to parties that a conciliation board has been appointed under this Part, it shall be conclusively presumed that the board described in the notice has been established in accordance with this Part, and no order shall be made or process entered or proceedings taken in any court to question the granting or refusal of a conciliation board or to review, prohibit or restrain the establishment of that conciliation board or any of its proceedings. *R.S.P.E.I. 1974, Cap. L-1, s.27.*

29. Oath by members of board

Each member of a conciliation board shall, before acting as such, take and subscribe before a person authorized to administer an oath or affirmation, and file with the Minister an oath or affirmation in the following form:

“I do solemnly swear (affirm) that I will faithfully, truly and impartially to the best of my knowledge, skill and ability, execute and perform the office of member of the conciliation Board appointed to and will not, except in the discharge of my duties, disclose to any person any of the evidence or other matter brought before the said board. So help me God.” *R.S.P.E.I. 1974, Cap. L-1, s.28.*

30. Board to endeavour to bring about agreement

- (1) A conciliation board shall, immediately after appointment of the chairman thereof, endeavour to bring about agreement between the parties.

Board to determine own procedure

- (2) Except as otherwise provided in this Part, a conciliation board may determine its own procedure, but shall give full opportunity to all parties to present evidence and make representations.

Meetings of board

- (3) The chairman shall, after consultation with the other members of the board, fix the time and place of sittings of the board and shall give reasonable notice to the parties and other members of the board as to the time and place so fixed.

Quorum

- (4) The chairman and one other member of a conciliation board is a quorum.

Decisions of majority on procedure

- (5) The decision of the majority of the members present at the sitting of a conciliation board on questions of procedure, admissibility of evidence and other matters that arise during such sitting shall be the decision of the board but lacking a majority decision on such matters the decision of the chairman shall govern. *R.S.P.E.I. 1974, Cap. L-1, s.29.*

31. Powers of board

A conciliation board has the power

- (a) to summon and enforce the attendance of witnesses and to compel them to give oral or written evidence on oath or on solemn affirmation if they are persons entitled to affirm in civil matters in the same manner as a court in civil cases;
- (b) to administer oaths; and
- (c) to accept such oral or written evidence as the conciliation board, in its discretion considers proper, whether admissible in a court of law or not. *R.S.P.E.I. 1974, Cap. L-1, s.30.*

32. Report of conciliation board

- (1) A conciliation board shall, within fourteen days after the appointment of the chairman of the board, or within such longer period as may be agreed upon by the parties or, as may be allowed by the Minister, file with the Minister a report in writing of the result of its endeavours and, if it has failed to bring about an agreement between the parties, of its findings and recommendations.

Minister may direct board to reconsider

- (2) After a conciliation board has filed its report the Minister may direct the conciliation board to reconsider and clarify or amplify the report or any part thereof and the report of the conciliation board shall not be deemed to be received by the Minister until such further report is filed.

Decision of majority of board

- (3) A report of the majority of its members constitutes the report of the conciliation board, but where there is no majority agreement, the chairman shall so notify the Minister in writing and the report of the chairman shall constitute the report of the board.



Copy of report for parties

- (4) On receipt of the report of a conciliation board, the Minister shall forthwith cause a copy thereof to be sent to the parties and he may cause the report to be published in such manner as he sees fit.

Report not to be used in evidence

- (5) No report of a conciliation board, and no testimony or proceedings before a conciliation board shall be receivable in evidence in any court except in the case of a prosecution for perjury. *R.S.P.E.I. 1974, Cap. L-1, s.31; 1987, c.38, s.2.*

33. Parties may agree to be bound by recommendations

At any time before or after the conciliation board has filed its report, the parties may agree in writing to accept the recommendations of the board whereupon such recommendations shall be final and binding on the parties and they shall give effect thereto. *R.S.P.E.I. 1974, Cap. L-1, s.32.*

34. Appointment of mediator

- (1) The Minister, instead of appointing a conciliation board, may appoint a mediator to endeavour to bring about agreement between the parties.

Powers of mediator

- (2) A mediator shall have all the powers of a conciliation board under this Part and sections 29 to 33 shall apply with the necessary changes. *R.S.P.E.I. 1974, Cap. L-1, s.33.*

COLLECTIVE AGREEMENTS

35. Upon whom a collective agreement is binding

- (1) A collective agreement, whether or not the bargaining agent is certified, is binding
- (a) upon the parties;
 - (b) in the case of a collective agreement between a trade union and an employers' organization, upon the employers covered by the agreement;
 - (c) in the case of a collective agreement between a council of trade unions and an employer or an employers' organization, upon the constituent unions of the council who are covered by the agreement and the employer or the employers covered by the agreement, as the case may be; and
 - (d) upon the employees in the unit defined in the agreement.

Obligations under collective agreement

- (2) Every employer, employers' organization, trade union and every person who is bound by a collective agreement shall do everything he is required to do and shall refrain from doing anything that he is required to refrain from doing by the provisions of the collective agreement and this Part.

Minimum term of collective agreement

- (3) Every collective agreement shall, if for an indeterminate term or for a term of less than one year, be deemed to be for a term of one year from the date upon which it came or comes into

operation, and shall not, except with the consent of the board, be terminated by the parties thereto within a period of one year from such date.

Revision of collective agreement

- (4) Subject to subsection (3) the parties may, by mutual consent, revise any provisions of a collective agreement. *R.S.P.E.I. 1974, Cap. L-1, s.34.*

36. Provision against strikes and lockouts

- (1) Every collective agreement shall provide that there will be no strikes or lockouts during the term of the agreement.

Provision where none in agreement

- (2) If a collective agreement does not contain such a provision, it shall be deemed to contain the following provision:

“There shall be no strikes or lockouts during the term of this agreement.”

Reopener clause strike or lockout not precluded

- (3) For the avoidance of doubt it is declared that where a collective agreement is in force for a certain term and the agreement contains a provision commonly known as a reopener clause enabling rates of wages to be renegotiated at a time specified in the agreement prior to the expiration thereof, the provisions of subsections (1) and (2) precluding strikes or lockouts during the term of the agreement do not have effect so as to prohibit any strike or lockout consequent on the failure of the negotiations pursuant to a reopener clause if the parties have, in conducting those negotiations, complied with section 24. *R.S.P.E.I. 1974, Cap. L-1, s.35; 1980, c.31, s.2.*

37. Arbitration provision

- (1) Every collective agreement shall contain a provision for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration, operation or alleged violation of the agreement, including any question as to whether a matter is arbitrable.

Provision where none in agreement

- (2) If a collective agreement does not contain such a provision as is mentioned in subsection (1), it shall be deemed to contain the following provision:

“Where a difference arises between the parties relating to the interpretation, application, administration, operation, or alleged violation of this agreement, including any question as to whether a matter is arbitrable, either of the parties may, after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference or allegation to arbitration and the notice shall contain the name of the first party’s appointee to an arbitration board. The recipient of the notice shall within five days inform the other party of the name of its appointee to the arbitration board. The two appointees so selected shall, within five days of the appointment of the second of them, appoint a third person who shall be the chairman. If the recipient of the notice fails to appoint an arbitrator, or if the two appointees fail to agree upon a chairman within the time limited, the appointment shall be made by the Minister upon the request of either party. The arbitration board shall hear and determine the difference or allegation and shall, within twenty-one days of the appointment of the chairman, issue a decision and the decision is final and binding upon the parties and upon any employee or employer affected by it. The decision



of a majority is the decision of the arbitration board, but if there is no majority the decision of the chairman governs”.

Board may modify provision where inadequate

- (3) If, in the opinion of the board, any part of the arbitration provision in the collective agreement, including the method of appointment of the arbitrator or arbitration board, is inadequate, or if the provision set out in subsection (2) is alleged by either party to be unsuitable, the board may, on the request of either party, modify the provision so long as it conforms with subsection (1), but, until so modified, the arbitration provision in the collective agreement or in subsection (2) as the case may be, applies.

Minister may appoint arbitrator where party fails to do so

- (4) Notwithstanding subsection (3), if there is failure to appoint an arbitrator where there is to be only one arbitrator or to constitute a board of arbitration under a collective agreement, the Minister, upon the request of either party, may appoint the arbitrator or make such appointments as are necessary to constitute the board of arbitration, as the case may be, and any person so appointed by the Minister shall be deemed to have been appointed in accordance with the collective agreement.

Payment of arbitrators

- (5) Where the Minister has appointed an arbitrator or the chairman of a board of arbitration under subsection (4), each of the parties shall pay one-half the remuneration and expenses of the person appointed, and, where the Minister has appointed a member of a board of arbitration under subsection (4) on failure of one of the parties to make the appointment, that party shall pay the remuneration and expenses of the person appointed.

Powers of arbitration board & arbitrator

- (6) An arbitrator or the chairman of an arbitration board, as the case may be, has power,
- (a) to summon and enforce the attendance of witnesses and to compel them to give oral or written evidence on oath, or on solemn affirmation if they are persons entitled to affirm in civil matters, in the same manner as a court of record in civil cases; and
 - (b) to administer oaths.

Power of arbitrator or arbitration board

- (6.1) An arbitrator or an arbitration board, as the case may be, has power
- (a) to accept such oral or written evidence as the arbitrator or the arbitration board as the case may be, in its discretion considers proper, whether admissible in a court of law or not;
 - (b) to enter any premises where work is being done or has been done by the employees or in which the employer carries on business or where anything is taking place or has taken place concerning any of the differences submitted and inspect and view any work, material, machinery, appliance or article therein, and interrogate any person respecting any such thing or any of such differences; and
 - (c) to authorize any person to do anything that the arbitrator or the arbitration board may do under clause (b) and to report to the arbitrator or the arbitration board thereon.

Substitution of penalty

- (7) Where an arbitrator or arbitration board determines that an employee has been discharged or otherwise disciplined by an employer for just cause and the collective agreement does not contain a specific penalty for the infraction that is the subject matter of the arbitration, the

arbitrator or arbitration board may substitute such other penalty for the discharge or discipline as to the arbitrator or arbitration board seems just and reasonable in all the circumstances.

Binding effect of award

- (8) An award of an arbitrator or an arbitration board is binding upon all persons bound by the collective agreement and all such persons shall do or abstain from doing anything required of them by the award.

Copy of award to be filed

- (9) The arbitration board or arbitrator shall send a copy of the award to the Minister and the Minister shall maintain a record of awards made pursuant to this section.

Enforcement of arbitration awards

- (10) Where a party, employer, trade union or employee has failed to comply with any of the terms of the award of an arbitrator or arbitration board, any person affected by the award may, after the expiration of fourteen days from the date of the award or the date provided in the award for compliance, if later, file in the office of the Prothonotary a copy of the award, and the award shall be entered in the same way as a judgment or order of that court and is enforceable as such.

Arbitration Act not applicable

- (11) The *Arbitration Act* R.S.P.E.I. 1988, Cap. A-16, does not apply to arbitrations under collective agreements. *R.S.P.E.I. 1974, Cap. L-1, s.36; 1983, c.25, s.2; 1986, c.5, s.2; 1993, c.29, s.4; 1994, c.32, s.11; 1997, c.20, s.3; 2000, c.5, s.3; 2008, c.20, s.72(53); 2009, c.73, s.2.*

JURISDICTIONAL DISPUTES

38. Jurisdictional dispute

- (1) In this section “jurisdictional dispute” means a dispute between two or more unions or between an employer or employers’ organization and one or more trade unions over the assignment of work.

Complaint to board

- (2) Where the parties to a jurisdictional dispute are unable to effect a settlement of the dispute, either party may make a complaint to the board.

Idem

- (3) The complaint shall identify the complainant and state the nature of the jurisdictional dispute and the request for adjustment.

Interim order of board

- (4) The board shall investigate the complaint and if the board is satisfied a reasonable effort has been made by the parties to settle the dispute, the board may issue an interim order directing the assignment of work to persons skilled in or belonging to a specific trade or craft or belonging to a specific trade union.

Application for review of interim order

- (5) A trade union, employer or employers’ organization involved in a jurisdictional dispute in respect of which an interim order has been made, may apply to the board to review the



interim order and the board shall conduct a hearing and may by order confirm, vary or revoke the interim order.

Order binding unless agreement or other binding decision prevails

- (6) An interim order made by the board and any order confirming, varying or revoking the interim order binds and governs all parties involved in or affected by the jurisdictional dispute to which the order relates unless
- (a) an agreement in writing respecting the assignment of the work made between the employer and the trade union or unions involved in or affected by the jurisdictional dispute is filed with the board; or
 - (b) the jurisdictional dispute is submitted to a tribunal or to arbitration and the tribunal or arbitrator renders a decision that binds the parties to a settlement of the jurisdictional dispute. *R.S.P.E.I. 1974, Cap. L-1, s.37; 1994, c.32, s.12.*

TRANSFER OF BUSINESS AND SUCCESSOR RIGHTS

39. Sale, lease or transfer by employer

- (1) Where an employer sells, leases or transfers or has agreed to sell, lease or transfer his business or the operations thereof or any part of either of them, and
- (a) either the employer or the purchaser, lessee or transferee or both of them is a party to or is bound by a collective agreement with a bargaining agent on behalf of any employees affected by such sale, lease or transfer;
 - (b) one or more bargaining agents have been certified as bargaining agent for any such employees;
 - (c) one or more trade unions have applied to be certified as bargaining agent for any such employees; or
 - (d) one or more bargaining agents have given or are entitled to give notice under either section 21 or section 23 with respect to any such employees,

unless and until the board otherwise directs, such collective agreement, certification, application, notice or entitlement to give notice continues in force and is binding upon such purchaser, lessee or transferee.

Application to board by such employer, purchaser, lessee or transferee

- (2) Any such employer, purchaser, lessee or transferee, or any such bargaining agent or trade union may apply to the board for the resolution of any question or problem that, as a result of such sale, lease or transfer, has arisen or may arise with respect to any such collective agreement, certification, application, notice or entitlement to give notice.

Powers of board upon application under ss(2)

- (3) Upon such application being made, the board shall, by order, make such award, give such direction, or take such other action, as in its discretion the board considers appropriate, to resolve any such question or problem and, without restricting the generality of the foregoing, may by such order or subsequent order
- (a) amend or rescind to such extent as the board considers necessary or appropriate any such collective agreement;
 - (b) revoke or amend any such certification or amend any such application for certification;
 - (c) modify or restrict the operation of any such notice or entitlement to give notice;

- (d) determine whether employees affected constitute one or more appropriate bargaining units;
- (e) if more than one collective agreement is to continue in force, designate which employees are to be covered by such agreements;
- (f) modify or restrict the operation or effect of any provision of any such collective agreement and define the rights with respect thereto of any employees affected by such sale, lease or transfer;
- (g) declare which trade union shall be the bargaining agent for such employees; and
- (h) interpret any provision of any collective agreement.

No requirement to bargain while application pending

- (4) Until the board has disposed of any application under subsection (3), such purchaser, lessee or transferee, notwithstanding any other provisions of this Part, shall not be required to bargain with any such bargaining agent with respect to employees to whom the application relates.

Board may hold hearings and examine records

- (5) Where any application is made under this section, the board may make or cause to be made such examination of records or other inquiries and may hold such hearings and take such representation votes as it considers necessary and prescribe the nature of evidence to be furnished to the board.

Employer reorganizing operations

- (6) Where an employer who is a party to or is bound by more than one collective agreement reorganizes or intends to reorganize his operations so that employees covered by separate collective agreements are intermingled or will be intermingled, the board may, on application by such employer or any bargaining agent party to any such collective agreement, exercise the powers conferred on the board by this section and the provisions of this section shall apply.

Joining of municipalities

- (7) Where two or more municipalities are amalgamated, united, or otherwise joined together, or all or part of one such municipality is annexed, attached, or added to another such municipality, the provisions of this section apply. *R.S.P.E.I. 1974, Cap. L-1, s.38.*

40. Merger of trade union

- (1) Where a trade union claims that by reason of a merger or amalgamation or a transfer of jurisdiction it is the successor of a trade union that at the time of the merger, amalgamation or transfer of jurisdiction was the bargaining agent of a unit of employees of an employer and any question arises in respect of its right to act as the successor, the board, in any proceeding before it or on the application of any person or trade union affected, may by order declare that the successor has or has not, as the case may be, acquired the rights, privileges and duties under this Part of its predecessor.

Examination of records, inquiries & representation votes

- (2) Before issuing an order under subsection (1), the board may make or cause to be made such examination of records or other inquiries, and may hold such representation votes as it considers necessary and prescribe the nature of evidence to be furnished to the board.



Affirmative vote, effect of

- (3) Where the board makes an affirmative declaration under subsection (1), the successor shall for the purposes of this Part acquire the rights, privileges and duties of its predecessor, whether under a collective agreement or otherwise. *R.S.P.E.I. 1974, Cap. L-1, s.39.*

STRIKES AND LOCKOUTS**41. Unlawful lockout, no employer etc. to call**

- (1) No employer, employers' organization or an agent or any other person acting on behalf of an employer or an employers' organization shall call, authorize, counsel, procure, support, encourage or engage in a lockout except as permitted by this section.

Unlawful strike, no employee etc. to call

- (2) No employee, trade union or person acting on behalf of a trade union shall call, authorize, counsel, procure, support, encourage or engage in a strike except as permitted by this section.

Strike or lockout permitted when conciliation or mediation completed

- (3) Where a trade union has been certified but no collective agreement has been entered into on behalf of the employees in the unit, or where the term of a collective agreement has expired or where negotiations pursuant to a reopener clause as mentioned in subsection 36(3) have failed, whether the bargaining agent named in such collective agreement is or is not certified, the employees in the said unit may strike and the employer may lock out such employees when the bargaining agent and the employer, or representatives authorized by them on their behalf, have bargained collectively and have failed to conclude a collective agreement, and either
- (a) a conciliation officer appointed by the Minister has been unable to bring about an agreement between the parties, and fourteen days have elapsed from the date on which the report of the conciliation officer was filed with the Minister and a conciliation board or mediator has not been appointed under section 27 or section 34; or
- (b) a conciliation board or mediator has been appointed and has been unable to bring about an agreement between the parties and seven days have elapsed from the date on which the report of the conciliation board or mediator was filed with the Minister.

No strike until majority vote in favour

- (4) No trade union or person shall declare or authorize a strike and no employee shall strike until after a vote has been taken by secret ballot of the employees in the unit affected as to whether to strike, and the majority of the employees voting has voted in favour of a strike; a strike vote shall not be taken until subsection (3) has been complied with.

No right to strike for police force, firemen, hospital employees

- (5) Notwithstanding any other of the provisions of this Part, no member of a police department nor any person being a full-time employee of any fire department, nor any employee of a person who provides ambulance services, nor any person employed to answer or dispatch emergency calls for police, fire or ambulance services nor any employee of Health PEI, nor any persons employed as security police officers by the University of Prince Edward Island, nor any employee of a nursing home or community care facility nor non-instructional personnel as defined in the *Education Act* has the right to strike, or to engage in any stoppage of work.

Arbitration board, appointment by Minister *re* police, firemen, hospital staff, nurses

- (6) Where any bargaining agent acting on behalf of any member of a police department, or on behalf of any person being a full-time employee of any fire department, or on behalf of any employee of a person who provides ambulance services, or on behalf of any person employed to answer or dispatch emergency calls for police, fire or ambulance services, or on behalf of any employee of Health PEI, or on behalf of any persons employed as security police, or on behalf of any person being an employee of a nursing home or community care facility or on behalf of non-instructional personnel as defined in the *Education Act*, and the employer of any such person, has complied with sections 21, 22, 23 and 24 of this Part, and where sections 25 and 26 have been invoked and complied with and where the conciliation officer has failed to bring about an agreement between the parties engaged in collective bargaining, the Minister shall appoint an arbitration board to resolve the matters upon which the parties have failed to agree and the Minister shall,
- (a) by notice in writing forthwith require each of the parties, within seven days of the date of such notice to nominate one person to be a member of the arbitration board, and in the event of the failure of either party to make such nomination within the time specified, the Minister shall appoint a person whom he thinks fit and proper, and such person shall be deemed to be nominated by the party so in default; and
 - (b) by notice in writing require the persons nominated to nominate within ten days of the date of such notice a third person who is willing and able to act to be a member and chairman of the arbitration board, and in the event of default of such nomination, the Minister shall appoint a person whom he thinks fit and proper, to be the third member and chairman of the arbitration board.

Arbitration board constituted

- (7) The persons nominated pursuant to subsection (6) shall be and constitute the arbitration board.

Arbitration board constituted

- (7.1) The remuneration and expenses of persons appointed to an arbitration board under subsection (6) shall be paid
- (a) in the case of a person appointed by or on behalf of the employer, by the employer;
 - (b) in the case of a person appointed by or on behalf of the bargaining agent, by the bargaining agent; and
 - (c) in the case of the chairperson, one third each by the Minister, the employer and the bargaining agent.

Sections applicable

- (8) Sections 29 to 32 apply with the necessary changes to the arbitration board.

Report of board final & binding

- (9) The report of the arbitration board shall be final and binding upon the parties. *R.S.P.E.I. 1974, Cap. L-1, s.40; 1977, c.22, s.1; 1980, c.31, s.3; 1987, c.38, s.3; 1988, c.36, s.6; 1994, c.32, s.13; 2002, c.29, s.22; 2005, c.39, s.13; 2006, c.16, s.63(7)(c),(d); 2008, c.49, s.1; 2010, c.15, s.2; 2010, c.21, s.1; 2016, c.6, s.124(3).*



INDUSTRIAL INQUIRY COMMISSION

42. Industrial inquiry commission, appointment of persons to

- (1) The Minister may, where he considers it expedient and calculated to maintain or secure industrial peace and to promote conditions favourable to settlement of disputes, establish and appoint one or more persons to an industrial inquiry commission.

Duties

- (2) The industrial inquiry commission shall inquire into the matters referred to it by the Minister and endeavour to effect a settlement of the matters referred to it.

Report of findings and recommendations, filed with Minister

- (3) The commission shall file with the Minister a report in writing of its findings and recommendations and the Minister shall furnish a copy of such report to the parties affected; sections 29 to 31 apply with the necessary changes to an industrial inquiry commission appointed under this section. *R.S.P.E.I. 1974, Cap. L-1, s.41.*

INFORMATION

43. Constitution, bylaws & statement of officers, filing with Minister

- (1) Every trade union and every employers' organization shall file with the Minister
 - (a) a copy, duly certified to be true and correct, of its constitution, rules and bylaws, or other instruments or documents containing a full and complete statement of its objects and purposes; and
 - (b) a statement signed by its president and secretary certifying the names and addresses of its officers and in the same manner report any changes of officers.

Execution of agreement, filing upon

- (2) Each of the parties to a collective agreement shall forthwith upon its execution file one copy with the Minister. *R.S.P.E.I. 1974, Cap. L-1, s.42.*

STATUS OF TRADE UNIONS AND EMPLOYERS' ORGANIZATIONS

44. Actions against trade union

- (1) A trade union or an employers' organization may sue and be sued or be prosecuted by its name as filed under section 43 and if not so filed, then by the name by which it is commonly known.

Vicarious responsibility

- (2) Any act or thing done or omitted by an officer, official or agent of a trade union or employers' organization within the scope of his authority to act on behalf of the trade union or employers' organization shall be deemed to be an act or thing done or omitted by the trade union or employers' organization. *R.S.P.E.I. 1974, Cap. L-1, s.43.*

CHECK OFF

45. Deduction of dues & initiation fees, binding

- (1) A provision in a collective agreement requiring the deduction from wages of initiation fees and union dues is binding upon the parties thereto and all persons bound by the agreement.

Request by individual employee for check off

- (2) Where no such provision exists in a collective agreement, the deduction shall be made by the employer only if an individual employee in a unit delivers to the employer a signed written request that such deductions be made from the wages due to him therein and indicating the officer of such trade union to whom the deductions shall be paid..

Revocation

- (3) Any written request made by the employee under subsection (2) may not be revoked within six months from the date thereof.

Remission of initiation fees & union dues by employer to trade union

- (4) Unless the authorization is revoked by written request delivered to the employer, the employer shall remit the initiation fees and union dues deducted to the trade union named in the authorization at least once each month together with a written statement of the names of the employees for whom the deductions were made and the amount of each deduction.

Authorization revoked, notice

- (5) If an authorization is revoked, the employer shall give notice thereof to the trade union.
R.S.P.E.I. 1974, Cap. L-1, s.44; 1994, c.32, s.14.

OFFENCES

46. Offences and penalties

- (1) Every person, trade union, employer or employers' organization that violates any provision of this Part or who has knowledge of and refuses or neglects to comply with any decision, determination, interim order, order, award, direction, declaration or ruling made under this Part, including any order made by the board under the provisions of section 11 and including any award made by an arbitrator or arbitration board under the provisions of a collective agreement or under the provisions of section 37 is guilty of an offence and on summary conviction is liable,
- (a) if an employee or other individual who is not an employee to a fine of not less than \$100, and not more than \$1,000; or
 - (b) if an employer, trade union or employers' organization, to a fine of not less than \$500 dollars and not more than \$5,000.

Each day offence continues, separate offence

- (2) Each day that a person, trade union, employer or employers' organization violates any provision of this Part or refuses or neglects to comply with any such decision, determination, interim order, order, award, direction, declaration or ruling constitutes a separate offence.

Payment of fines

- (3) Every fine recovered for an offence under this Part shall be paid to the Minister of Finance and shall form part of the Operating Fund.



Burden of proof re lack of knowledge

- (4) Where in any prosecution under this section, knowledge is an ingredient of the offence, the burden of proof of lack of knowledge shall be upon the person, trade union, employer or employers' organization charged.

Two or more offences, cited in information

- (5) An information in respect of a contravention of this Part may be for one or more offences and no information, warrant, conviction or other proceedings in any such prosecution is objectionable or insufficient by reason of the fact that it relates to two or more offences. *R.S.P.E.I. 1974, Cap. L-1, s.45; 1975, c.17, s.2; 1983, c.1, s.6; 1986, c.5, s.2; 1997,c.20,s.3; 2010,c.31,s.3; 2012,c.17,s.2; 2015,c.28,s.3.*

CONSENT TO PROSECUTE**47. Consent of board required**

- (1) No prosecution for an offence under this Part shall be instituted except with the consent in writing of the board.

Idem

- (2) An application under subsection (1) for consent to institute a prosecution may be made by a person, a trade union, a council of trade unions, a corporation or an employers' organization, and, if consent is given by the board, the information may be laid by the person or by an officer or representative of a trade union or council of trade unions on behalf of the person, or by any officer or representative of the trade union, council of trade unions, corporation or employers' organization.

Idem

- (3) A certificate, signed by the chairman of the board and dated, certifying that the board consents to the prosecution of the person, employee, employer, trade union, council of trade unions, or employers' organization named therein for an offence under this Act alleged to have been committed, or in the case of a continuing offence, alleged to have commenced on a date therein set out, is a sufficient consent for the purpose of subsection (1).

Prosecution by the Minister of Justice and Public Safety and Attorney General

- (4) This section does not apply to a prosecution instituted by the Minister of Justice and Public Safety and Attorney General. *R.S.P.E.I. 1974, Cap. L-1, s.46; 2004,c.36,s.3; 2010,c.14,s.3; 2012,c.17,s.2; 2015,c.28,s.3.*

GENERAL**48. Technical irregularity**

- (1) No proceedings under this Part shall be deemed invalid by reason of any defect in form or any technical irregularity. *R.S.P.E.I. 1974, Cap. L-1, s.47.*

Enlargement of time

- (2) The board may, upon such terms as it thinks advisable, enlarge the time prescribed by this Act for doing any act, serving any notice, filing any report, document or paper, or taking any

proceeding and may do so although application therefor is not made until after the expiration of the time prescribed.

Abridgement of time

- (3) Where it is satisfied that it is necessary or convenient in the public interest, the board may abridge the time prescribed by this Act for doing any act, serving any notice, filing any report, document or paper, or taking any proceeding. *R.S.P.E.I. 1974, Cap. L-1, s.47. R.S.P.E.I. 1974, Cap. L-1, s.47; 1994, c.32, s.15.*

49. Regulations

- (1) The Lieutenant Governor in Council may make regulations generally for carrying any of the purposes or provisions of this Part into effect.

Publication in Gazette

- (2) Regulations made under this section and rules and regulations made by the board under section 3 come into force on the day of the publication thereof in the Gazette. *R.S.P.E.I. 1974, Cap. L-1, s.48.*

50. Remuneration for conciliation or mediation

Persons appointed by the Minister to an industrial inquiry commission or to provide conciliation or mediation services shall be paid such remuneration for their services and necessary expenses as the Minister may prescribe. *R.S.P.E.I. 1974, Cap. L-1, s.49 L-1, s.47; 1994, c.32, s.15.*

51. Order declaring Act of Parliament applicable

- (1) The Lieutenant Governor in Council may by order declare that any Act of the Parliament of Canada and any order of the Governor General in Council whether heretofore or hereafter enacted or made, relating to matters dealt with by this Part shall apply in place of this Part in respect of the employees employed upon or in connection with any work, undertaking or business in the province or in any part thereof, and in respect of the employer of such employees, and any such order upon its publication in the Gazette or upon such later date as may be named therein shall have the same effect as if enacted herein.

Agreements with Minister of Labour (Canada)

- (2) The Minister, on behalf of the province, with the approval of the Lieutenant Governor in Council, may enter into an agreement with the Minister of Labour of Canada to provide for
- (a) the administration of any Act of the Parliament of Canada and of any order of the Governor General in Council described in subsection (1) in regard to the employees and employers in respect of whom such Act or order in council may be declared to apply pursuant to subsection (1); and
 - (b) for the employment by the Government of Prince Edward Island in the administration of this Part of persons who are in the employ of the Government of Canada and to provide for the employment by the Government of Canada in the administration of the legislation of the Parliament of Canada of persons who are in the employ of the Government of Prince Edward Island and to provide for the payments to be made by the Government of Canada to the Government of Prince Edward Island and conversely in respect of such employment. *R.S.P.E.I. 1974, Cap. L-1, s.50.*



51.1 Confidentiality of board

- (1) The records of a trade union relating to membership or any records that may disclose whether a person is or is not a member of a trade union or does or does not desire to be represented by a trade union produced in a proceeding before the board is for the exclusive use of the board and its officers and shall not, except with the consent of the board, be disclosed, and no person shall, except with the consent of the board, be compelled to disclose whether a person is or is not a member of a trade union or does or does not desire to be represented by a trade union.

Immunity of members and staff

- (2) No member of the board, nor its Chief Executive Officer, nor any of its staff shall be required to give testimony in any civil proceeding respecting information obtained in the discharge of their duties under this Act.

Information obtained by conciliation officer or mediator

- (3) No information or material furnished to or received by a conciliation officer or a mediator
- (a) under this Act; or
 - (b) in the course of any endeavour that a conciliation officer or mediator may make under the direction of the Minister to effect a collective agreement after the Minister
 - (i) has released the report of a conciliation board, or
 - (ii) has informed the parties that he does not consider it advisable to appoint a conciliation board,

shall be disclosed except to the Minister or the Deputy Minister.

Report of conciliation officer or mediator

- (4) No report of a conciliation officer or mediator shall be disclosed except to the Minister or the Deputy Minister but nothing in this section shall preclude the report of any such officer being made available to a conciliation board where a board is established subsequently in a proceeding that was before the conciliation officer or mediator.

Staff not competent or compellable witnesses

- (5) The Minister, the Deputy Minister, any conciliation officer or mediator, or any person designated by the Minister to endeavour to effect a collective agreement is not a competent or compellable witness in a proceeding before any court or other tribunal respecting any information, material or report mentioned in subsection (3) or (4) or respecting any information or material furnished to or received by him, or any statement made to or by him in an endeavour to effect a collective agreement.

Idem, conciliation board member

- (6) The chairman or any other member of a conciliation board is not a competent or compellable witness in proceedings before any court or other tribunal respecting
- (a) any information or material furnished to or received by him;
 - (b) any evidence or representation submitted to him; or
 - (c) any statement made by him,
- in the course of his duties under this Act.

Information obtained by officers

- (7) No information or material furnished to or received by the Chief Executive Officer or by any officer or by any person appointed by him and no report of any such person shall be disclosed

except to the board or as authorized by the board, and no member of the board and no such person is a competent or compellable witness in proceedings before any court or other tribunal respecting any such information, material or report. *1994, c.32, s.17.*

PART II — CONSTRUCTION INDUSTRY LABOUR RELATIONS

52. Definitions

In this Part

- (a) “**accredited employers’ organization**” means an organization of employers that is accredited under the Act as the bargaining agent for a unit of employers in the construction industry;
- (b) “**appropriate unit**” means a unit determined by the board to be appropriate for collective bargaining purposes;
- (c) “**construction industry**” means the on-site construction, alteration, decoration, repair, or demolition of buildings, structures, roads, sewers, water mains, pipelines, tunnels, bridges, canals, or other works but excludes the manufacture, installation or sale of any prefabricated house or modular home or mobile home;
- (d) “**council of trade unions**” means a council that is formed for the purpose of representing or that according to established bargaining practice represents trade unions as defined;
- (e) “**employee**” means a person employed in the construction industry but does not include
 - (i) a person who, in the opinion of the board, performs management functions or is employed in a confidential capacity in matters relating to labour relations, or
 - (ii) a member of the architectural, dental, engineering, legal or medical profession entitled to practise in Prince Edward Island and employed in a professional capacity, registered nurses, and teachers as defined in the *Education Act*;
- (f) “**employer**” means any person who employs or in the preceding twelve months has employed more than one employee and who operates a business in the construction industry;
- (g) “**employers’ organization**” means an organization of employers that is formed for purposes that include the regulation of relations between employers and employees as defined in this section;
- (h) “**sector**” means one of the following divisions of the construction industry:
 - (i) industrial and commercial,
 - (ii) housebuilding,
 - (iii) sewers, tunnels and water mains,
 - (iv) road building,
 - (v) any other sector determined by the board;
- (i) “**trade union**” or “**union**” means a trade union that according to established trade union practices pertains to the construction industry;
- (j) “**unionized employee**” means an employee on behalf of whom a trade union or council of trade unions has been certified or recognized as bargaining agent in



accordance with section 18 and where the certification or recognition has not been revoked;

- (k) “**unionized employer**” means an employer of unionized employees in the geographical area and sector concerned. *R.S.P.E.I. 1974, Cap. L-1, s.51; 1994, c.32, s.19; 1999, c.32, s.1; 2016, c.6, s.124(3).*

53. Application of Part I to Part II

Except where inconsistent with Part II of this Act the provisions of Part 1 apply to the construction industry and all references therein to “employer” and “trade union” shall be taken to be references to “employers’ organizations” and “council of trade unions” where appropriate. *R.S.P.E.I. 1974, Cap. L-1, s.52.*

CERTIFICATION

54. Certification of bargaining agent

- (1) Where a trade union makes application for certification as bargaining agent for a unit of employees of an employer, the board shall forthwith make or cause to be made such examinations of records and other inquiries as it considers necessary and shall determine
- (a) whether the unit applied for is appropriate for collective bargaining; and
 - (b) whether a majority of the employees in the unit wish the applicant trade union to be certified as bargaining agent for such employees.

Appropriate unit

- (2) If the board is satisfied that the unit applied for is appropriate for collective bargaining and that a majority of the employees in the unit wish the applicant trade union to be certified as bargaining agent for such employees, the board shall forthwith and without holding a hearing, issue a certification order, that, except as provided in this section, shall have the same effect as an order under section 13.

Certification order constitutes notice to bargain

- (3) An order issued under subsection (2) constitutes, as of the date of issue, a notice to commence collective bargaining and the trade union and the employer, or an employers’ organization representing the employer, shall within ten days after the notice is issued, or such further time as the parties may agree, commence collective bargaining with a view to concluding a collective agreement.

Determination of unit of employees appropriate for collective bargaining

- (4) Where a trade union applies for certification under this section, the board may determine the unit of employees that is appropriate for collective bargaining by reference to a geographic area and it need not confine the unit to a particular site or project.

Section 21 applies to bargaining

- (5) Section 22 applies where the board issues an order under subsection (2).

Employer may apply for review

- (6) The employer named in an order issued under subsection (2) may within ten days of the date of issue apply to the board for a review of the order, but the application shall not alter the rights or obligations of the parties arising from the order.

Board shall conduct review

- (7) Upon receipt of an application under subsection (6) the board shall conduct a review and shall either confirm, vary or rescind such order and where the order is rescinded, subsection 20(2) applies.

Application of other sections

- (8) Sections 12, 13, 14, 15 and 16 apply to applications under this section but where there is any conflict this section prevails. *R.S.P.E.I. 1974, Cap. L-1, s.53.*

ACCREDITATION

55. Employers' organization may apply for accreditation

- (1) An employers' organization claiming to represent the unionized employers in a geographic area engaged in a particular sector of the construction industry may, subject to the rules of the board, make application to be accredited as the sole collective bargaining agent for all unionized employers in the sector of the construction industry in the geographic area applied for.

Board to decide questions

- (2) Where an employers' organization makes application for accreditation as sole collective bargaining agent for all unionized employers in a geographic area and sector of the construction industry
- (a) the board shall determine the geographic area and sector that is appropriate for accreditation;
 - (b) the board may designate the whole or any part of the province as an appropriate geographic area; and
 - (c) the board may, before accreditation, if it considers it appropriate to do so, include additional employers in or exclude employers from the unit.

Accreditation of employers' organization

- (3) Where, in an application for accreditation, the board is satisfied either
- (a) that the employers' organization has as members a majority of the unionized employers in the geographic area and sector applied for; or
 - (b) that the employers' organization has as members
 - (i) no less than thirty-five per cent of the unionized employers in the geographic area and sector applied for, and
 - (ii) those employers who are members of the employers' organization employ a majority of employees employed by organized employers in the geographic area and sector applied for,

the board may accredit the employers' organization as the sole collective bargaining agent to bargain for all unionized employers in the area and sector.

Ascertaining number of unionized employers in area

- (4) Upon application for accreditation the board shall ascertain the number of unionized employers in the geographic area and sector applied for and the number of them who were members of the employers' organization at the time the application was made.



Representation vote

- (5) If it considers it advisable, the board may hold a representation vote of employers in the sector and area applied for.

Employee, defined

- (6) For purposes of this section, an employee shall be deemed to be a person who was on the payroll of an employer in the sector and area applied for the weekly payroll period immediately preceding the date of the application or if, in the opinion of the board, such payroll period is unsatisfactory for any one or more of the unionized employers in the sector and area applied for, then for such other weekly payroll period of any one or more of the employers as the board considers advisable.

Board may accredit

- (7) Where the board is satisfied that the employers' organization has met the requirements herein, it may accredit the employers' organization as the sole bargaining agent to bargain with all trade unions or councils of trade unions for the unionized employers in the sector and area determined by the board as an appropriate unit.

Board to determine fitness of employers' organization

- (8) Before the board accredits an employers' organization the board shall satisfy itself that
- (a) the employers' organization is a properly constituted organization controlled by its members; and
 - (b) each of its members has vested appropriate authority in the organization to enable it to discharge the responsibilities of an accredited bargaining agent.

Dismissal or postponement of application

- (9) Where the board is of the opinion that appropriate authority has not been vested in the employers' organization the board may dismiss or postpone disposition of the application to enable employers who are members of the employers' organization to vest in the organization whatever additional or other authority the board considers necessary.

No accreditation where discrimination etc.

- (10) Notwithstanding anything contained in this Act, no employers' organization that discriminates against any person because of sex, race, creed, colour, nationality, ancestry or place of origin shall be accredited. *R.S.P.E.I. 1974, Cap. L-1, s.54.*

56. Accredited employers' organization becomes sole bargaining agent

- (1) Upon accreditation, all rights, duties and obligations under this Act of employers for whom the accredited employers' organization is or becomes the bargaining agent accrue to the accredited employers' organization.

Notice to commence collective bargaining

- (2) A collective agreement between an employer and a trade union or trade unions that is in force at the date of accreditation of an employers' organization shall not bar a trade union or council of trade unions from giving notice to such accredited employers' organization to commence collective bargaining nor shall it bar such accredited employers' organization from giving notice to a trade union or council of trade unions to commence collective bargaining.

Effect of collective agreement at date of accreditation

- (3) Where at the time an employers' organization is accredited, a collective agreement between an employer referred to in subsections (1) and (2) and a trade union or trade unions is in force, that collective agreement terminates and is no longer in force,
- (a) where a collective agreement is concluded between the employers' organization and the trade union or trade unions, on the date of signing or the date on which the collective agreement comes into force, whichever is later; or
 - (b) where a collective agreement is not concluded between the employers' organization and the trade union or trade unions, on the date on which a strike or lockout is permitted in accordance with subsection 41(3).

Effect of accreditation when union certified or recognized

- (4) Where an employers' organization has been accredited and where after the date of the accreditation order, a union is certified for or recognized in accordance with section 19 by another employer in the sector and area covered by the accreditation order, the bargaining rights, duties and obligations of that employer, whether he becomes a member of the accredited organization or not, accrue to the employers' organization and the employer is bound by any collective agreement in effect or subsequently negotiated between the accredited employers' organization and a trade union or council of trade unions in that sector.

Accreditation not affected by non-membership of employer

- (5) Notwithstanding that an employer's membership in an accredited employers' organization is terminated, the accredited employers' organization retains all rights, duties and obligations gained under this section on behalf of the employer until the accreditation has been revoked.
R.S.P.E.I. 1974, Cap. L-1, s.55.

57. Employers' organization may not deny membership, where

- (1) No accredited employers' organization and no person acting on behalf of an accredited employers' organization shall deny membership to any employer for whom it is bargaining agent for a reason other than refusal or failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the employers' organization as a condition of acquiring or retaining membership in the organization.

Employer may file complaint

- (2) An employer may make a complaint in writing to the board that an employers' organization or person acting in behalf of an employers' organization has failed to comply with subsection (1) and the board shall have the same power to deal with the complaint as with a complaint under section 11. *R.S.P.E.I. 1974, Cap. L-1, s.56.*

58. Effect of collective agreement

- (1) A collective agreement entered into between an employers' organization and a trade union, trade unions, or council of trade unions is binding upon the employers' organization, employers whose bargaining rights have been acquired by the employers' organization engaged in the construction industry in the sector and area covered by the accreditation order, the trade union, trade unions, council of trade unions and upon every employee within the scope of the collective agreement.



Agreement by individual employer not binding

- (2) No collective agreement shall be individually negotiated between an employer in the accredited sector and area and a trade union or council of trade unions and if such collective agreement is entered into it shall not be binding on any person. *R.S.P.E.I. 1974, Cap. L-1, s.57.*

59. Revocation of accreditation, application for

- (1) Any of the employers in the unit of employers determined in an accreditation order pursuant to section 55 may apply to the board for a declaration that the accreditation is revoked
- (a) where the accreditation order has been in effect for not less than twelve months and the accredited employers' organization is not party to any collective agreement;
 - (b) after the commencement of the forty-sixth month of the operation of the accreditation order and before the commencement of the forty-ninth month of its operation; or
 - (c) during the three-month period immediately preceding the end of every third year thereafter.

Ascertaining number of employers

- (2) Upon an application under subsection (1) the board shall ascertain
- (a) the number of employers in the unit of employers on the date of the making of the application;
 - (b) the number of employers in the unit of employers who, within the two-month period immediately preceding the date of the making of the application, have voluntarily signified in writing that they no longer wish to be represented by the accredited employers' organization; and
 - (c) the number of unionized employees affected by the application of the employers in the unit of employers on the payroll of each such employer for the weekly payroll period immediately preceding the date of the making of the application or if, in the opinion of the board, such payroll period is unsatisfactory for any one or more of the employers, such other weekly payroll period for any one or more of the employers as the board considers advisable.

Revocation of accreditation

- (3) If the board is satisfied
- (a) that a majority of the employers ascertained in accordance with clause (2)(a) has voluntarily signified in writing that they no longer wish to be represented by the accredited employers' organization; and
 - (b) that such majority of employers employed a majority of the employees ascertained in accordance with clause (2)(c),

the board may declare the accreditation of the employers' organization revoked.

Declaration that accreditation revoked

- (4) Upon an application under subsection (1), when the employers' organization informs the board that it does not desire to continue to represent the employers in the unit of employers, the board may declare the accreditation of the employers' organization revoked.

Effect of declaration

- (5) Upon the board making a declaration under subsection (3) or (4), all rights, duties, and obligations of the employers' organization under this Act and under any unexpired collective agreement revert to the individual employers represented by the employers' organization. *R.S.P.E.I. 1974, Cap. L-1, s.58.*

60. Prohibition of agreement to supply employees during legal strike or lockout

No trade union or council of trade unions that has bargaining rights for employees of employers represented by an accredited employers' organization and no such employer or person acting on behalf of the employer, trade union or council of trade unions shall, so long as the accredited employers' organization continues to be entitled to represent the employers in a unit of employers, enter into any agreement or understanding, oral or written, that provides for the supply of employees during a legal strike or lockout, and if any such agreement or understanding is entered into, it is void and no such trade union or council of trade unions or person shall supply such employees to the employers. *R.S.P.E.I. 1974, Cap. L-1, s.59.*

PART III — EMPLOYMENT STANDARDS

Part III repealed by *1992, c.18, s.43.*

