

Legal framework for collective bargaining of a renewal agreement in Manitoba¹

Labour relations between employers and most certified employees are governed by the Manitoba [*Labour Relations Act*](#) ("the Act").² Collective agreements must also comply with other legislation including the *Employment Standards Code*, the *Workplace Safety and Health Act*, and the *Manitoba Human Rights Code*. The most important provisions of the *Labour Relations Act* governing collective bargaining include:

1. Establishment of Bargaining Rights by Certification

Where a union is certified under this Act as the bargaining agent for the employees in a unit the union has exclusive authority to bargain collectively on behalf of employees in the unit and, subject to a ratification vote by all the members of the unit, to bind them by a collective agreement [s.44].

A collective agreement is binding upon every employee in the **bargaining unit** to which the collective agreement applies [s. 72(1)] even if some members of the bargaining unit are not members of the union. All members of the bargaining unit must be allowed to participate in strike and ratification votes [s. 93(2), 69(1)].

2. Notice to Bargain

Not more than 90 days and not less than 30 days preceding the date of expiry of the term of a collective agreement, either party may by notice require the other party to commence collective bargaining with a view to the renewal or revision of the collective agreement [s. 61(1)].

3. Obligation to bargain in good faith

Once legal notice has been given, the parties have to meet within **10 days** (unless they agree otherwise) to "bargain collectively in good faith with one another" and to "make every reasonable effort to conclude a collective agreement." [s. 62].

4. Provision of Information

The employer must provide the union with a list of all employees in the unit indicating: the job title or classification of each employee; the rate of pay in each classification and any other benefits to which the employees in each classification are entitled under their terms and conditions of employment; and the cost to the employer of all the benefits to which the employees in each classification are entitled under their terms and conditions of employment [s. 66(1)-(2)].

¹ Current as of November 2024.

² C.C.S.M. c. L10

5. Freeze on working conditions: Extension of term of collective agreement

The parties may, in the collective agreement or otherwise and before or after the term of the collective agreement has expired, agree to continue the operation of the collective agreement or any of its provisions for a period of less than one year while they are bargaining for its renewal or revision or for a new collective agreement, but either party may, upon 48 hours' notice to the other party, terminate the continued operation of the collective agreement [s. 74(2)].

6. Conciliation

In Manitoba, conciliation is **not** mandatory before a union can strike or an employer can lock out or impose new terms. However, failure to cooperate in conciliation or mediation by either party is subject to an unfair labour practice [s. 28(1)].

7. Provisions for a legal strike or lockout

In order for a union to go on a legal strike or for an employer to lock out employees or unilaterally impose new terms and conditions of work, the following conditions must be met:

- a. The collective agreement must have expired [s. 89(2)].
- b. In the case of a strike, the union must have held a strike vote [s. 93(1)].
- c. An Essential Services Agreement, or a determination that one is not necessary, must be in place [s. 94.3 (1), 94.3(1.1)]

For a strike vote, the voting constituency is the unit represented by the bargaining agent, and a majority of employees in the unit who cast ballots must vote in favour of a strike in a secret ballot. [s. 93(2), (4)]. Employees must have reasonable notice and a reasonable opportunity to cast a ballot [s. 93(3)].

For an Essential Services Agreement (ESA), no later than 180 days before the expiry of the collective agreement the parties must determine whether it is necessary, in the event of a lockout or legal strike, to continue the supply of services, operation of facilities or production of goods in order to prevent a threat to the health, safety or welfare of residents of Manitoba; maintain the administration of justice; or prevent a threat of serious environmental damage [s. 94.3(1), 94.3(1.1)].

The parties then must set out in writing the determination of whether an ESA is necessary; file a copy of the determination with the labour board; and provide a copy of the determination to the minister if requested to do so. If the parties determine that an ESA is necessary, or if the board makes an order designating one, then the parties must enter into an ESA no later than 90 days before the expiry of the term of the collective agreement [s. 94.3(2)]. The filed copies of the determination and of the ESA have the same effect as an order of the Labour Board. The parties may access ESA dispute resolution through the Labour Board or an arbitrator. If the parties do not enter into an ESA within the required timeframe the Board must, on application made by either of them, determine any question with respect to the application of an ESA [s. 94.3(6)]. But within two days after an application is made to the Board, the parties may serve notice to the Board that they have agreed to settle the ESA by arbitration. [s. 94.3(10.1)]

Where an ESA is necessary, a strike cannot be held until three days after serving notice of the strike date (i.e. the day written notice is served must be followed by three full calendar days, then the strike can start on the morning of the fifth day or later.) [s. 93.1 (2)] If the lockout or strike does not commence on the day for which notice was given, a new notice must be given for the new date. [s. 93.1(3)]

If the Union and the Employer agree to reopen specific provisions of the collective agreement before expiry, the provisions governing strikes and lockouts apply [s. 61(3), 63(4)]. Put more simply, Unions can strike and employers can lockout on reopeners in Manitoba. Should your Employer propose a reopener, consult with your CAUT Senior Labour Relations Officer.

8. Provisions governing strikes and lockouts

Employers or anyone acting on their behalf are not allowed to deny any pension benefits or benefits under a group insurance plan to employees in the unit if the union is willing to assume payment of employer contributions for these benefits [s. 18].

Employers or anyone acting on their behalf are not allowed to hire replacement workers during a lockout of legal strike to perform work of an employee in the unit, or the work normally performed by a person who is performing the work of an employee in the unit [s. 94.1(1), 94.1(2), 94.1(2.1)]. This includes: anyone hired after the date on which notice to bargain was given; anyone who ordinarily works at another workplace of the employer, other than management functions; anyone who is transferred to the struck/locked out workplace after the date on which notice to bargain was given; anyone employed, engaged or supplied to the employer by another person; and any employee at the same workplace who is in a unit that is not locked out or on legal strike.

Employers or anyone acting on their behalf or any other person, including unions or anyone acting on their behalf, are not allowed to engage in strike-related misconduct [s. 14(1)-(2), 14.1]. Acts of incitement, intimidation, coercion, provocation, infiltration or surveillance that are intended to interfere with a legal strike or lockout are included in the term "strike-related misconduct" [s. 1].

It is illegal to be disciplined or terminated for being on strike [s. 2(1)].

An employee under a collective agreement can refuse to perform work which would directly facilitate the operations of an employer whose employees are locked out or on legal strike. Such a refusal will not be a breach of the collective agreement, and the employee cannot be subject to discipline for it. An employer who discharges, disciplines or threatens action against an employee for this reason, commits an unfair labour practice [s. 16]. However, the employer is not required to pay wages to employees for any period during which they refuse to perform work [s.15].

Provision exists for the compulsory settlement of strikes in Sections 87 and 87.1 of the Act: more below.

9. Mediation and arbitration

Where collective bargaining has commenced, either party may request the Minister appoint a mediator. The Minister may appoint a mediator even if no joint request has been made by the parties, the Minister may appoint a mediator to assist in concluding a collective agreement [s. 95(1.1), 95(2)].

Final and binding interest arbitration to settle a collective agreement is voluntary and must be agreed to by both parties: **CAUT does not recommend that you agree to interest arbitration; your CAUT Senior Labour Relations Officer can provide information about this recommendation.**

However, either party has the sole right to apply to the Labour Board to settle a strike or lockout under sections 87 and 87.1:

Where a strike or lockout has commenced, the employer or the bargaining agent for a unit may apply in writing to the board to settle the provisions of a collective agreement if

- a. at least 60 days have elapsed since the strike or lockout commenced;
- b. the parties have attempted to conclude a new collective agreement with the assistance of a conciliation officer or mediator for at least 30 days during the period of the strike or lockout; and
- c. the parties have not concluded a new collective agreement [s. 87.1(1)].

If the board determines that the party making this application is bargaining in good faith but that a new collective agreement is unlikely to be concluded within 30 days if the parties continue to bargain, the employees shall immediately terminate any strike; the employer shall immediately terminate any lockout; and the provisions of a collective agreement between the parties shall be settled : (i) by an arbitrator, if the parties serve a notice of their wish for arbitration, or (ii) by the board [s. 87.3(1)(c)].

A collective agreement settled under this section is binding on the parties and on the employees in the unit as though it were a collective agreement voluntarily entered into between the parties [s. 87.3(6)].

10. Ratification and final offer votes

The bargaining agent shall, within 30 days of the reaching of agreement between the parties,

cause to be held a vote by secret ballot of the employees in the bargaining unit to determine whether they accept or reject the proposed collective agreement [s 69(1)]. All tentative agreements reached through collective bargaining must be ratified by a vote in which more than 50% of those who cast ballots vote in favour of ratification, after receiving reasonable notice and a reasonable opportunity to cast a ballot [s. 69(2)-(3)].

If at any time before or after the commencement of a strike or lockout the Minister is of the opinion that it is in the public interest for employees in the affected unit to be given an opportunity to accept or reject the employer's last offer, the Minister may order that a vote be held immediately [s. 72.1(2)]. The Board is responsible for conducting the vote in accordance with the terms and conditions given by the Minister and determining the results of such a vote [s. 72.1(3)-(4)]. If a majority of the employees participating in the vote accept the employer's last offer, the proposed agreement becomes binding on the parties [s. 72.1(5)].

11. Mandatory provisions

The Act requires every collective agreement to include four clauses. They are compulsory checkoff [s. 76(1)-(2)], final settlement without work stoppage [s. 78(1)], just cause for discipline and dismissal [s. 79], and exercise of management rights that is reasonable, fair, in good faith, and in a manner consistent with the collective agreement as a whole [s. 80]. In addition, on the written request of either party, the Act requires a fifth clause to be inserted to deal with ongoing consultation between the parties during the term of the collective agreement [s. 81].