

Legal framework for collective bargaining of a renewal agreement in Alberta¹

Labour relations between most employers and unionised employees are governed by the **Labour Relations Code (LRC)**. Collective agreements must also comply with other legislation, such as the **Post-Secondary Learning Act (PSLA)**, the **Occupational Health and Safety Act** and the **Alberta Human Rights Act**. The **Employment Standards Code** does not apply [s. 90 *PSLA*].

1. Establishment of bargaining rights by certification

For most unions under the LRC, it is the **Labour Relations Board (LRB)** that certifies them as the bargaining agent for a bargaining unit that the LRB has determined is appropriate for collective bargaining.

However, in the case of unions with academic staff members at public post-secondary institutions governed by the *PSLA* (universities, colleges and technical institutes), they are legislatively created under the *PSLA*. In order to have the parties be subject to the LRC, **the LRC deems that the Board of Governors are employers [s. 58.3(1)(a)], academic staff are employees and academic staff associations are deemed to be the trade unions** for academic staff with the exclusive authority to act as bargaining agent [ss. 58.3(1)(b) and (c); s. 58.3(2)].

Another difference is that, except for the Banff Centre, **the *PSLA* gives the institutions' Board of Governors the initial authority to decide who is a member of the union**, after first consulting with the union and any other bargaining agent that will be affected [s. 60(2)]. **The Board's decisions are appealable to the LRB** by a person or bargaining agent affected by a decision by the Board of Governors to designate or not designate individual employees or a category of employees as academic staff members [s.58.6]. The LRB's decision is final and binding [s. 58.6(3)]. The *LRC* sets out a number of criteria that the LRB may consider when deciding such applications [s.58.6(2)].

Divisions 5 to 9 of the LRC, which deal with certification, revocation of bargaining rights, voluntary recognition and successorship, **do not apply to these parties** [s. 58.2] – meaning that during this period of time the academic unions are protected from being displaced as the bargaining agents.

LRC Section 156 Health, welfare and pension trusts does not apply to the post-secondary academic bargaining [s. 58.2].

Agreements negotiated under the *PSLA* (prior to the Bill to enact An Act to Enhance Post-Secondary Academic Bargaining bring post-secondary under the *LRC*) are collective agreements for the purposes of the *LRC* [s. 58.1(3)].

¹ Current as of September 2023

Academically employed graduate students and postdoctoral students at post-secondary institutions that are governed by the *PSLA* are subject to the same labour relations regime described above for academic staff [ss. 58.2(b) and (c); 58.4; 58.5 of the *LRC*].

2. Notice to bargain

Either party may give written notice of its desire to bargain a renewal agreement **not less than 60 days and not more than 120 days before expiry** [s. 59(2)]. The parties can negotiate a longer notice period within the collective agreement [s. 59(2)]. Once written notice is given, the parties must **commence collective bargaining not more than 30 days after the notice was given** [s. 60(1)]. The parties must exchange proposals within 15 days of the first meeting unless they agree on a longer period [s. 60(2)].

In Alberta, the notice to bargain must contain or be accompanied by the names and addresses of the person or persons authorized to i) bargain collectively, ii) conclude a collective agreement, and iii) sign a collective agreement [s. 61(1)]. It must contain or be accompanied by the names and addresses of all bargaining team members [s. 61(3)]. And it must indicate whether negotiations are subject to ratification and, if so, by whom [s. 61(6)]. Upon receipt of this notice, the other party must respond by providing the names and addresses of its designates.

3. Obligation to bargain in good faith

Under the *LRC*, collective bargaining means first and foremost making every reasonable effort to conclude and sign a collective agreement. The parties are required by the act to engage in **good faith bargaining** according to the procedures prescribed by the act [s. 60(1)].

4. Duty of fair representation

In representing its members, the Union cannot act in a manner that is **arbitrary, discriminatory, or in bad faith** [*LRC*, s. 153(1)]. This principle applies in bargaining as well as grievances.

5. Freeze on working conditions

After notice has been given, **neither the employer nor the union can make any unilateral changes to wages or terms and conditions of work** [ss. 130, 147]. The freeze on changes is lifted, except with regard to essential service workers, only when a strike or lockout commences [ss. 130(1)(c), 130(2)].

6. Mediation

In Alberta, mediation is **mandatory** before a union or employer can take a strike or lockout vote [s. 75(3)].

Either party can request in writing that the Director of Mediation Services appoint a mediator, or the Minister can act on her/his initiative in requiring the Director to appoint one [s. 65(1)]. The language of the act does not require the declaration of an impasse before filing for mediation.

If the bargaining unit provides essential services under Division 15.1 of the *LRC*, certain conditions must be met before the Director will appoint a mediator [s. 65(2.1)]: the parties must have an essential services agreement that has been accepted for filing; or the parties have been granted an exemption under section 95.21; or the Commissioner has made a declaration under section 95.44(7); or the Commissioner consents to a mediator being appointed.

The act does not establish a clear timeline for the appointment of the mediator [s. 65(1)]. In most cases, expect a two-week period. Within 14 days of her/his appointment, or within 14 days of a last offer vote, whichever is later [s. 65(5)], or within a longer period agreed upon by the parties or prescribed by the Director, the mediator will do one of two things: i) recommend terms of

settlement with a fixed time for acceptance or rejection; or ii) notify the parties that she/he will not recommend terms of settlement [s. 65(6)].

Note that the *LRC* also provides for informal mediation as well as the formal mediation described above [s. 64]. Informal mediation under Section 64 [s. 64] has no impact on strike or lockout provisions of the act. Consult with your CAUT Senior Labour Relations Officer before agreeing to engage in informal mediation.

7. Provisions governing strikes and lockouts

In order for a union to go on a legal strike (including “work to rule”) or for an employer to lock out employees, the following conditions must be met [s. 73]:

- a) The collective agreement must have expired [s. 73(a)].
- b) Bargaining must have occurred.
- c) For those involved in post-secondary academic bargaining [s. 95.2(1)(d)] as well as those bargaining in certain other sectors [s. 95.2(1)], an essential services agreement must have been filed [s. 95.44(7)] or an exemption has been granted [s. 95.21].
- d) A 14-day cooling off period must have passed since:
 - a. The mediator has indicated that she/he will not recommend terms of settlement [s. 65(7)(a)], or
 - b. The date fixed by the mediator for acceptance or rejection of recommended terms of settlement [65(7)(b)], or
 - c. The date the parties are notified of the results of a last offer vote [65(7)(c)].
- e) In the case of a strike:
 - a. A strike **vote** cannot occur until after the 14-day cooling off period [s. 75(3)].
 - b. The union must apply to the Labour Board to have the strike vote supervised [s. 75(1)].
 - c. The vote must be by secret ballot [s. 15(2)] and give all employees of the bargaining unit ample opportunity to vote.
 - d. A majority of Employees who have actually voted must have voted in favour of the strike [s. 76(3)].
 - e. If a strike does not occur within 120 days of the vote, the strike vote is void, and another vote must be taken before a strike can occur [s. 77(1)].
- f) The party declaring a strike or lockout must provide:
 - a. The other party with 72 hours’ notice of the date, time, and place that the strike or lockout will commence [s. 78(1)(a) & 78(2)(a)], and
 - b. The mediator with notice of the time, date, and place that the strike or lockout will commence [s. 78(1)(b) & 78(2)(b)].
- g) If a strike or lockout does not occur on the time and date of the notice, the party declaring a strike or lockout must give 72 hours’ notice of a new time, date, and place, unless the parties agree to an amendment of an earlier notice [s. 79(1)]. If the parties to a dispute agree in writing to do so, a strike notice or a lockout notice may be amended one or more times after it has been served by changing the date, time or initial location or any of them specified for the commencement of the strike or lockout.

The *LRC* provides for **last offer votes**. At any time after the exchange of the proposals, but only once during a round of bargaining, either party may apply to the Labour Board to conduct a vote to accept or reject the offer [s. 69].

Section 84 of the *LRC* addresses the legality of picketing but does not specifically address its conduct, other than to prohibit secondary picketing [s. 84.1]. There is, however, case law guiding what conduct can and cannot be restricted. Consult with your CAUT Senior Labour Relations Officer immediately if your employer threatens legal action against pickets.

There is no legal right in Alberta to refuse to cross the picket line of another union (except to refuse unsafe work).

There is no prohibition against the use of replacement workers ("scabs").

The employer is not legally obligated to continue to make payments to pension and benefits plans or to pay sickness, pregnancy and parental, sabbatical, vacation, and similar entitlements. Strike protocols often include agreements about these provisions. As part of a strike protocol, unions should negotiate provisions to continue contributions benefit plans. The union will be expected to pay the full contributions during any strike. The employer is not permitted to discontinue or threaten to discontinue any benefit under an insurance scheme where premiums are being paid by the bargaining agent. The employer also cannot refuse to accept premiums from the bargaining agent or refuse to remit those premiums to the insurer [s. 155].

Employees cannot be disciplined or fired just for participating in a legal strike or exercising other rights under the *LRC*. However, they can be disciplined or fired for just cause after a strike for some kinds of strike-related conduct (picket line violence, etc.).

8. Interest arbitration

CAUT does not recommend that you agree to interest arbitration; your CAUT Senior Labour Relations Officer can provide information about this recommendation.

9. Ratification

In Alberta, ratification of a collective agreement is not legally required. Nevertheless, all tentative agreements reached through collective bargaining should be ratified by a vote in which more than 50% of those members voting vote in favour of ratification. The vote should be by secret ballot and should give ample opportunity for all members of the bargaining unit to vote.