Legal framework for collective bargaining of a renewal agreement in British Columbia[1]

Labour relations between employers and most unionised employees are governed by the *Labour Relations Code* (the "Code"). Collective agreements must also comply with other legislation including the *Employment Standards Act*, the *Occupational Health and Safety Regulation*, and the *Human Rights Code*.

The most important provisions of the Labour Relations Code governing collective bargaining include:

1. Establishment of Bargaining Rights by Certification

A certified trade union is the bargaining agent for the bargaining unit that the Labour Relations Board determined was appropriate for collective bargaining. The unit's scope should be included in the recognition clause of your collective agreement [ss. 18, 22, 24].

A collective agreement applies to everyone in the **bargaining unit** even if some members of the bargaining unit are not members of the union [s.27], and all members of the bargaining unit must be allowed to participate in strike and ratification votes [s. 40].

2. Notice to Bargain

At any time within **4 months** before the agreement expires, either party may give written notice and require the other party to commence collective bargaining. If notice has not been given **90 days** before expiry, both parties have been deemed to have given notice 90 days before the expiry of the agreement [s. 46].

3. Obligation to bargain in good faith

Once notice has been given, the parties have to commence bargaining within **10 days after the date of the notice** and must "make every reasonable effort to conclude a collective agreement or a renewal or revision of it." [s. 47]

4. Freeze on working conditions

After notice has been given, neither the employer nor the union can make any unilateral changes to any term or condition of employment until a strike or lockout has commenced, a new collective agreement has been negotiated, or the right of the union to represent the employees in the bargaining unit has been terminated [s. 45(2)].

However, after notice to the trade union, the board can authorise an employer to alter the wages or a terms or condition of employment [s. 45(3)].

[1] Current as of Sept. 2023.

5. Conciliation and mediation

In British Columbia, conciliation is **not mandatory** before a union can strike or an employer can lock out.

The associate chair of the Mediation Division may appoint a mediator if either party makes a written request and the request is accompanied by a statement of the matters the parties have or have not agreed on in the course of collective bargaining. The minister may also appoint a mediation officer at any time during collective bargaining if he or she considers that the appointment is likely to facilitate the making of a collective agreement. The mediation officer must report to the associate chair within 10 days of the first meeting with the parties or 20 days after the appointment, unless the parties agree to or the minister directs a longer period. If either party so requests of the associate chair, or if the minister so directs, the mediation officer must provide to the associate chair and the parties a report concerning the collective bargaining dispute, and the report may include recommended terms of settlement. The parties are obliged to provide information that the mediator requests [s. 74].

6. Provisions governing strikes and lockouts

In order for a union to go on a legal **strike**, including "work to rule":

- **a.** The collective agreement must have expired [s. 57].
- **b.** A vote complying with the following conditions has been held [s. 59 (2) (a)]:
  - **i.** A strike vote must not be held until the parties have bargained collectively in accordance with the code [s. 59].
  - **ii.** The majority of the employees in the affected bargaining unit who vote must have voted for a strike.
  - **iii.** The vote must be conducted by secret ballot.
  - **iv.** The results of the vote, including the number of ballots cast and the number of votes for, against, or spoiled must be made available to the union and its members and to the employer [s. 39].
  - **v.** A strike may be authorised only within the **3 months** following the strike vote [s. 60(3)(a)].
- **c.** The union must have given **72 hours written notice of the strike** to the employer and the Board. Where a mediator has appointed, the strike can only begin **48 hours** after the associate chair informs the union that the mediator has reported or 72 hours since the union issued the strike notice, whichever is longer. The Board may extend the notice period under certain conditions [s. 60].

In order for an employer to **lock out** employees:

- **a.** The collective agreement must have expired [s. 57(2)].
- **b.** The parties must have bargained collectively in accordance with the Code [s. 59].
- **c.** If 2 or more employers are engaged in the same labour dispute, a majority of the employers who vote must have voted for a lockout [s. 61(1)].

d. The employer must have given **72 hours written notice of the lockout** to the union and the Board. Where a mediator has appointed, the lockout can only begin **48 hours** after the associate chair informs the employer that the mediator has reported or 72 hours since the employer issued the lockout notice, whichever is longer. The Board may extend the notice period under certain conditions [s. 61(b)].

Once a legal strike or lockout has continued for 72 hours, the vote and notice provisions do not apply to the other party (for example, if the employer has locked out employees for 72 hours, the union can declare a strike without complying with the pre-strike vote and notice provisions of s. 60).

Health and welfare benefits other than pension benefits or contributions must be continued if the union pays the premiums. The employer or insurer must allow the union to make the payment and cannot refuse any to provide an employee with any such benefit because an employee is legally on strike or locked out [s. 62].

Picketing is restricted as follows:

a. During a legal strike or lockout, a union may picket at or near a site that is under the direction or control or the employer and where striking or locked out employees usually perform work that is an integral and substantial part of the employer's operation [s. 65(3)].

b. Picketing of other sites where the employer or an ally performs work for the benefit of the employer ("secondary picketing") requires an application to the board [s. 65(4)].

c. On sites where there is more than one employer, the board must restrict picketing so it only affects the employer or an ally of the employer causing the strike or lockout ("common site picketing"). If this would be impossible without prohibiting otherwise permissible picketing, the board may regulate the common-site picketing as it considers appropriate [s. 65(7)].

During a strike or lockout, an employer cannot use paid or unpaid **replacement workers** (scabs) to do bargaining unit work. Prohibited replacement workers are persons who:

a. Were hired after the notice was given or bargaining began, whichever is earlier, or

b. Normally work at another operation belonging to the employer, or

c. Were transferred from another operation after notice was given or bargaining began, or

d. Were supplied to the employer by someone else to do struck/locked out work [s. 68].

An employer cannot force a non-striking/locked out worker to do the work of a striking/locked out worker [s. 68(2) and (3)].

Employees cannot be disciplined or fired just for participating in a legal strike or exercising other rights under the Code [ss.5-6]. However, they can be disciplined or fired for just cause after a strike for some kinds of strike-related conduct (picket line violence, etc.).

Where a collective agreement permits employees to refuse to cross a picket line, such a refusal is not considered a strike in British Columbia.

4. Mediation and arbitration

The associate chair of the Mediation Division may appoint a mediator if notice to bargain has been given and either party makes a written request accompanied by a statement of the issues on which the parties have and have not agreed. The minister may also appoint a mediator if he or she believes it is likely to facilitate the making of a collective agreement [s. 74].

The parties may also agree to refer issues in dispute to an arbitrator. **Under most circumstances, CAUT does not recommend that you agree to interest arbitration; your CAUT Senior Labour Relations Officer can provide information about this recommendation.**

5. Ratification

Although the Code does not require a ratification vote, it is good practice to submit a tentative agreement to the membership for ratification. If a vote is conducted, all members of the bargaining unit may vote [s. 40], the vote must be by secret ballot, and the results of the vote must be made available to the members, the union, and the employer [s. 39].

Before a strike or lockout, the employer can request that its last offer be put to a vote by the members of the bargaining unit, and the associate chair must direct that such a vote be taken. The employer can only compel a vote on their most recent offer once in the course of a dispute. During a strike or lockout, the minister may require a final offer vote if he or she considers it in the public interest [s. 78].

6. Mandatory provisions

All collective agreements must contain the following provisions (and are deemed to contain these provisions if they are absent):

- **a.** Minimum term of one year [s. 50].
- **b.** A provision requiring the establishment of a joint consultation committee if either party requests one [s. 53].
- **c.** Provision against strikes and lockouts during the term of the agreement [s. 58].
- **d.** Provisions governing dismissal and discipline and a requirement that the employer must have just and reasonable cause [s. 84].
- **e.** Provision for binding grievance arbitration [s. 84].
- **f.** Provision for final and conclusive settlement without stoppage of work. The default is arbitration but the legislation contemplates the possibility of "another method agreed to by the parties" [s. 84(2)].

Collective agreements may (but are not required) to make union membership a condition of employment [s.15] and may contain provisions governing paid release time for union business and use by the union of the employer’s premises.