

# Legal framework for collective bargaining of a renewal agreement in Ontario<sup>1</sup>

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

The most important provisions of the Labour Relations Act 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 [s. 7-15].

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. 56], and all members of the bargaining unit must be allowed to participate in strike and ratification votes [s. 79(8)].

## 2. Notice to Bargain

Either party may give written notice of its desire to bargain a renewal agreement, with or without amendments, within **90 days** before the agreement expires [s. 59(1)].

## 3. Obligation to bargain in good faith

Once notice has been given, the parties have to meet within **15 days** (unless they agree otherwise) and "bargain in good faith and make every reasonable effort to make a collective agreement" [s. 17].

## 4. 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 until the parties are in a legal strike/lockout position [s. 86]. Once the freeze period has ended, the employer can unilaterally impose terms (which usually results in a strike). **Contact your CAUT Senior Labour Relations Officer if your employer threatens to use this aggressive tactic.**

## 5. Conciliation

In Ontario, conciliation is **mandatory** before a union can strike or an employer can lock out or impose new terms [s. 79(2), 86].

If either party makes a request any time after notice has been given, the Minister must

---

<sup>1</sup> Current as of Sept. 2023.

appoint a conciliator. This happens within a few days. The conciliator must confer with the parties and report to the Minister within **14 days** of being appointed unless the parties agree to extend the period [s. 18(1), 20].

If the parties do not reach agreement in conciliation, either party can ask the conciliator to request a “no board” report from the Minister. The Union will be in a legal strike position nine days after a conciliation board’s report, or 16 days after a “no board” report. [s. 21(b), 79(2)]. The Minister is not obligated to issue a no board report on request, but in practice does issue the report within a short period.

## 6. 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 or unilaterally impose new terms and conditions of work, the following conditions must be met:

- a. The collective agreement must have expired
- b. Sixteen days<sup>2</sup> must have passed since the Minister issued a “no-board” report
- c. In the case of a strike, the union must have held a strike vote any time after 30 days before the agreement expired. The vote must be by secret ballot and give all members of the bargaining unit ample opportunity to vote. More than 50% of those voting must have voted in favour of the strike [s. 79].

There is no mandatory notice period before a work stoppage once there is a legal strike/lockout position.

The OLRA does not address picketing, but there is 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 Ontario 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”) in Ontario.

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.

Employees cannot be disciplined or fired just for participating in a legal strike or exercising other rights under the Labour Relations Act [s. 72]. However, they can be disciplined or fired for just cause after a strike for some kinds of strike-related conduct (picket line violence, etc.).

---

<sup>2</sup> 16 days have elapsed after the day the Minister is deemed pursuant to subsection 122 (2) to have released to the parties a notice that he or she does not consider it advisable to appoint a conciliation board. 2018, c. 14, Sched. 2, s. 10.

## 7. Mediation and arbitration

If the parties agree, the Minister can appoint a mediator to assist the parties in any circumstance where s/he is required or authorised to appoint a conciliator [s. 19].

If the parties agree to go to arbitration to settle a collective agreement, the arbitration supersedes all other dispute resolution provisions of the act (including strike and lockout) and the arbitrator's decision is binding [s. 40].

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

## 8. Ratification

All tentative agreements reached through collective bargaining must be ratified by a vote in which more than 50% of those voting vote in favour of ratification. The vote must be by secret ballot and give ample opportunity for all members of the bargaining unit to vote [s. 79].

If the Minister deems it to be in the public interest, s/he can require a ratification vote on the last offer made by the employer [s. 41].

Once during any collective bargaining round, an employer can request the Minister to force a ratification vote to reject or accept the employer's offer, and the Minister must conduct such a vote [s. 42(1)].

## 9. 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. 58];
- b. Mandatory recognition of the union as the exclusive bargaining agent for the defined bargaining unit [s. 45];
- c. Provision against strikes and lockouts during the term of the agreement [s. 46];
- d. On request from the union, the employer must collect and remit dues for all members of the bargaining unit [s. 47]; and
- e. Provision for binding grievance arbitration [s. 48].

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