

Legal framework for collective bargaining of a renewal agreement in Prince Edward Island¹

Labour relations between employers and unionised employees are governed by the *Labour Act (LA)*. Collective agreements must also comply with other legislation, including the *Occupational Health and Safety Act* and the *Prince Edward Island Human Rights Act*.

The most important provisions of the *LA* 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.

A collective agreement applies to everyone in the bargaining unit even if some members of the bargaining unit are not members of the union, and all members of the bargaining unit must be allowed to participate in strike votes [s. 41(4)].

2. Notice to Bargain

Either party may give written notice of its desire to bargain a renewal agreement **at least two months preceding expiry** [s. 23]. The parties can negotiate a longer notice period within the collective agreement [s. 23]. Once written notice is given, the parties must **commence collective bargaining "within twenty days after the notice was given**, or such further time as the parties may agree" [s. 24(a)].

3. Obligation to bargain in good faith

Under the *LA*, 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. 22(a)].

4. Duty of Fair Representation

In representing its members, the Union cannot act in a manner that is arbitrary, discriminatory, or in bad faith. This principle applies in bargaining as well as grievances. In PEI, the union's Duty of Fair Representation is based on common law. It is not codified in the *LA*.

¹ Current as of Sept. 2023.

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 [s. 24(b)]. Note that in PEI, employers can impose conditions once the parties are in strike/lockout position.

6. Conciliation

In PEI, conciliation is **mandatory** before a union can strike or an employer can lock out or impose new terms [s. 24(b)(ii)].

Either party can make a request to the minister in writing for the appointment of a conciliator, or the minister can act on her/his initiative to appoint one [s. 25]. The language of the act does not require the declaration of an impasse before filing for conciliation.

The act does not establish a clear timeline for the appointment of the conciliator. In most cases, expect a two week period. The conciliator fixes the time and place of the meeting and must give the parties "reasonable notice of the meeting" [s. 25]. NB. While most conciliators would consult with both parties before fixing the date, the conciliator may fix a date without consultation. Consult with your CAUT Senior Labour Relations Officer if the conciliator fixes a date that seems unreasonable.

The LA does establish a timeline for the conciliator to file her/his "no board" report. The report can be filed within ten days after the conciliator has first met to confer with the parties or within any longer period that the minister may allow [s. 26].

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:

- a. The collective agreement must have expired.
- b. Bargaining must have occurred.
- c. 14 days must have passed since the provincial conciliator has filed a "no board" report with the minister [s. 41(3)(a)].
- d. In the case of a strike, the union must have held a strike vote.
 - i. In PEI, that strike vote cannot be taken until after the 14-day cooling off period [s. 41(4)].
 - ii. The vote must be by secret ballot and give all employees of the bargaining unit ample opportunity to vote. A majority of Employees who have voted must have voted in favour of the strike [s. 41(4)].

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. 36(3)]. Put more simply, Unions can strike and employers can lockout employees on reopeners in PEI. Should your Employer propose a reopener, consult with your CAUT Senior Labour Relations Officer.

The LA does not address picketing, but there is case law guiding what conduct can and cannot be

restricted. Contact your CAUT Senior Labour Relations Officer immediately if your employer threatens legal action against pickets.

There is no legal right in PEI 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 PEI. But s. 9(5) requires that replacement workers be terminated upon the end of the strike or lockout. In other words, the striking employees have a right to get their jobs back.

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.

Employees cannot be disciplined or fired just for participating in a legal strike or exercising other rights under the *LA*. 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 PEI, 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 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.