

Legal framework for collective bargaining of a renewal agreement in Saskatchewan¹

Labour relations between employers and most unionised employees are governed by the *Saskatchewan Employment Act (SEA)*. Collective agreements must also comply with other legislation including the *Occupational Health and Safety Regulations, 1996*, and the *Saskatchewan Human Rights Code*.

The most important provisions of the *SEA* 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. 6-32].

2. Notice to Bargain

Either party may give written notice of its desire to bargain a renewal agreement **not less than 60 and no more than 120 days** before the agreement expires. Once written notice is given, the parties must "immediately engage in collective bargaining" [s. 6-26].

3. Obligation to bargain in good faith

Under the *SEA*, collective bargaining means first and foremost "negotiating in good faith with a view to the conclusion of a collective agreement or its renewal or revision" [s. 6-1(e)(i)]. The parties are required by the Act to engage in good faith bargaining according to the procedures prescribed by the Act [s. 6-7].

4. Duty of Fair Representation

In representing its members, the Union cannot act in a manner that is arbitrary, discriminatory, or in bad faith [s. 6-59]. 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

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to wages or terms and conditions of work [s. 6-39, s. 6-62(n)]. In some provinces, employers can impose conditions once the parties are in strike/lockout position. In Saskatchewan, the freeze is in place until there is an actual strike or lockout.

6. Mediation/Conciliation

In Saskatchewan, some form of mediation or conciliation is **mandatory** before a union can strike or an employer can lock out [s. 6-33(7)], and in turn mediation or conciliation requires notice of impasse: “the employer or union shall serve a written notice on the minister and the other party that an impasse has been reached.” [s. 6-33(1)]

Either party can give notice of impasse, in which case the minister shall appoint a labour relations officer or special mediator or establish a conciliation board [s. 6-33]. There are no clear provisions in the act regarding appointment times of labour relations officers.

The written notice of impasse must set out the essential services, if any, that, in the opinion of the party providing the notice, must be maintained in the event of a strike or lockout. [s. 6-33(2)]

Either party can make a request, or the minister can act on her/his initiative to have a labour relations officer, a special mediator, or a conciliation board appointed [s. 6-27, 6-28, 6-29].

If a labour relations officer is appointed under s. 6-27 or s. 6-33, and if the labour relations officer is unable to assist the parties in getting an agreement, the labour relations officer files a report with the minister and starts the clock ticking towards a potential lockout or strike. The appointment of special mediators and conciliation boards is rare.

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 [s. 6-30].
- b. Bargaining must have occurred [s. 6-31].
- c. Notice of impasse must have been given [s. 6-33(7)].
- d. 14 days must have passed since the labour relations officer, special mediator, or conciliation board has filed a report with the minister [s. 6-33(7)(d)].
- e. In the case of a strike, the union must have held a strike vote any time after bargaining has begun. The vote must be by secret ballot [s. 6-22] 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. 6-32].
- f. The party declaring the strike or lockout must give the other party 48 hours’ written notice of the date and time the strike or lockout will commence, promptly notifying the minister of the same [s. 6-34].

- g. The parties must have an essential services agreement in place or have gone to the Tribunal for an essential services order [s. 7-5]

The SEA 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 Saskatchewan 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 Saskatchewan.

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. However, the act does require the employer to receive payment from the union to continue benefit plans: "No person shall cancel or threaten to cancel an employee's membership in a benefit plan if the union tenders payment in accordance with subsection" [6-36].

Employees cannot be disciplined or fired just for participating in a legal strike or exercising other rights under the SEA. 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

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. S. 6-38(1) provides that only members of the union have a right to vote on ratification. The vote must be by secret ballot and give ample opportunity for all members of the bargaining unit to vote. The ratification process must commence within 14 days of reaching a tentative agreement and must conclude within 60 days [s. 6-38].

Once during any round of collective bargaining, an employer or a group representing "at least 45% of the bargaining unit or 100 employees, whichever is less" [s. 6-35(1)] can request the Minister to force a vote to accept the employer's offer, and the board must direct that such a vote be taken [s. 6-35].

Additionally, if a labour relations officer, a special mediator, a conciliation board, or the Minister considers it to be in the public interest, they can require a vote on the last offer made by the employer [s. 6-35(4)].