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# Bill 119

## An Act to amend the Labour Relations Act, 1995

**Ms C. Forster**

**Private Member's Bill**

1st Reading      April 4, 2017

2nd Reading

3rd Reading

Royal Assent



## EXPLANATORY NOTE

The Bill amends the *Labour Relations Act, 1995* as follows:

1. The Act currently provides that trade unions in the construction industry may elect to have applications for certification dealt with without a vote. The Act is amended to extend this option to all trade unions.
2. Currently, parties who are unable to enter into a first collective agreement may apply to the Ontario Labour Relations Board to direct the settlement of a first collective agreement by arbitration. The Act is amended to provide that as an alternative, either party may request first agreement arbitration by contacting the Minister. The Minister shall refer the matter to a board of arbitration if certain conditions are met.

## **An Act to amend the Labour Relations Act, 1995**

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

### **1 The *Labour Relations Act, 1995* is amended by adding the following section:**

#### **Election, certification without a vote**

**10.1** (1) A trade union applying for certification as bargaining agent of the employees of an employer may elect to have its application dealt with under this section rather than under section 8.

#### **Procedure**

(2) Subsections 128.1 (2) to (12) and (14) to (17) apply to an application dealt with under this section.

#### **Board to certify trade union**

(3) If the Board is satisfied that more than 55 per cent of the employees in the bargaining unit are members of the trade union on the date the application is filed, it shall certify the trade union as the bargaining agent of the employees in the bargaining unit.

#### **Non-application of certain provisions**

(4) Sections 8, 8.1 and 10 do not apply in respect of an application dealt with under this section.

#### **Determining bargaining unit**

(5) Section 9 applies with necessary modifications to determinations made under this section.

#### **Transition**

(6) This section applies in respect of applications made on or after the day on which the *Fairness in First Contracts and the Right to Representation Act, 2017* comes into force.

**2 Subsection 11 (3) of the Act is amended by striking out “section 8.1” and substituting “section 8.1 or 10.1”.**

**3 Subsection 12 (3) of the Act is amended by striking out “sections 7, 8 and” and substituting “sections 7, 8, 10.1 and”.**

**4 (1) Subsection 43 (1) of the Act is repealed and the following substituted:**

#### **First agreement arbitration**

- (1) The first collective agreement between parties shall be settled by arbitration in accordance with this section if,
- (a) the Minister refers the matter to first agreement arbitration in the circumstances described in subsection (1.2); or
  - (b) the Board directs first agreement arbitration after receiving an application under subsection (1.3).

#### **Initiation**

(1.1) For the purposes of this section, first agreement arbitration is initiated on the day on which the Minister makes a referral described in clause (1) (a) or the day on which the Board makes a direction described in clause (1) (b).

#### **Arbitration on request to Minister**

(1.2) A party may make a request to the Minister for first agreement arbitration and the Minister shall immediately refer the matter to a board of arbitration if the following conditions are met and shall notify the parties of the referral:

1. Thirty days have elapsed since the day on which it became lawful for the employees to strike and the employer to lock out employees.
2. The parties have been unable to enter into a first collective agreement.

#### **Arbitration on application to Board**

(1.3) A party may apply to the Board for first agreement arbitration if,

- (a) the Minister has released,
  - (i) a notice that it is not considered advisable to appoint a conciliation board, or

(ii) the report of a conciliation board; and

(b) the parties have been unable to enter into a first collective agreement.

#### **Proposed collective agreement**

(1.4) The party seeking first agreement arbitration shall include with the request or application a copy of a proposed collective agreement which the party is prepared to execute and shall provide a copy of it to the other party.

#### **Same, other party**

(1.5) Within 10 days after receiving the copy of the proposed collective agreement, the other party shall file with the Minister or the Board, as the case may be, a copy of a proposed collective agreement which that party is prepared to execute.

#### **Board of arbitration to settle agreement**

(1.6) Subject to subsection (3), if first agreement arbitration is initiated, a board of arbitration composed of three members shall settle the first collective agreement between the parties and the following rules apply:

1. Each party shall appoint one member of the board of arbitration within 10 days after first agreement arbitration is initiated and shall inform the other party of its appointee. The appointees shall, within five days of the appointment of the second of them, appoint a third person who shall be the chair.
2. If a party fails to make an appointment as required by paragraph 1 or if the appointees fail to agree on a chair within the time limited, the appointment shall be made by the Minister on the request of either party.
3. The chair appointed under paragraph 1 or 2 shall promptly provide to the Minister or the Board, as the case may be, the name and contact information of each member of the board of arbitration.
4. The Minister or the Board, as the case may be, shall provide the chair of the board of arbitration with a copy of the proposed collective agreements included with the request or application under subsection (1.4) and filed under subsection (1.5).
5. The parties may agree that the board of arbitration shall settle the first collective agreement by final offer selection.

**(2) Subsection 43 (2) of the Act is amended by striking out “subsection (1)” in the portion before clause (a) and substituting “subsection (1.3)”.**

**(3) Subsections 43 (6) and (7) of the Act are repealed.**

**(4) Subsection 43 (14) of the Act is amended by striking out the portion before clause (a) and substituting the following:**

#### **Effect of direction on strike or lock-out**

(14) The employees in the bargaining unit shall not strike and the employer shall not lock out the employees where first agreement arbitration has been initiated and, where first agreement arbitration has been initiated during a strike by, or a lock-out of, employees in the bargaining unit, the employees shall forthwith terminate the strike or the employer shall forthwith terminate the lock-out and the employer shall forthwith reinstate the employees in the bargaining unit in the employment they had at the time the strike or lock-out commenced,

**(5) Subsection 43 (16) of the Act is repealed and the following substituted:**

#### **Working conditions not to be altered**

(16) Where first agreement arbitration has been initiated, the rates of wages and all other terms and conditions of employment and all rights, privileges and duties of the employer, the employees and the trade union in effect at the time notice was given under section 16 shall continue in effect, or, if altered before the initiation of first agreement arbitration, shall be restored and continued in effect until the first collective agreement is settled.

**(6) Subsection 43 (19) of the Act is amended by striking out “the day that the Board may fix, but not earlier” and substituting “the day that the board of arbitration or the Board, as the case may be, may fix, but not earlier”.**

**(7) Clause 43 (23.1) (a) of the Act is amended by striking out “subsection (1)” and substituting “subsection (1.3)”.**

**(8) Clause 43 (23.1) (b) of the Act is amended by striking out “subsection (1)” and substituting “subsection (1.3)”.**

**(9) Subsections 43 (23.2), (23.3), (23.4) and (23.5) of the Act are repealed and the following substituted:**

#### **Procedure in dealing with multiple applications**

(23.2) The Board shall proceed to deal or continue to deal with the application under subsection (1.3) before dealing with the decertification application or displacement application, as the case may be.

**When application under subs. (1.3) granted**

(23.3) If the Board grants the application under subsection (1.3), it shall dismiss the decertification application or displacement application.

**When application under subs. (1.3) dismissed**

(23.4) If the Board dismisses the application under subsection (1.3), it shall proceed to deal with the decertification application or displacement application.

**Transition, multiple applications**

(23.5) Subsections (23.2) to (23.4) apply with respect to an application referred to in those subsections that was filed with the Board before the day on which the *Fairness in First Contracts and the Right to Representation Act, 2017* received Royal Assent only if the Board has not made a final decision on that application before that day.

**(10) Section 43 of the Act is amended by adding the following subsections:****When Minister refers matter to board of arbitration**

(23.6) A decertification application or displacement application is of no effect if it is filed with the Board after first agreement arbitration is initiated under subsection (1.2) unless the application is brought after the first collective agreement is settled and it meets the requirements set out in this Act with respect to the application.

**Transition**

(23.7) If an application for first agreement arbitration has been made to the Board before the day on which the *Fairness in First Contracts and the Right to Representation Act, 2017* came into force and the Board has not made a final decision on that application before that day,

- (a) the application shall be dealt with and disposed of by the Board under subsection (2);
- (b) paragraph 4 of subsection (1.6) does not apply; and
- (c) no further requests or applications under this section shall be made until the Board has made a final decision on the application.

**Commencement**

**5 This Act comes into force on the day it receives Royal Assent.**

**Short title**

**6 The short title of this Act is the *Fairness in First Contracts and the Right to Representation Act, 2017*.**