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Bill 178

**An Act to resolve the labour dispute between the College Employer Council
and the Ontario Public Service Employees Union**

The Hon. K. Flynn
Minister of Labour

Government Bill

1st Reading November 17, 2017

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill addresses the labour dispute between the College Employer Council and the Ontario Public Service Employees Union. It requires the termination of any strike or lock-out and provides a mechanism for achieving a new collective agreement.

An Act to resolve the labour dispute between the College Employer Council and the Ontario Public Service Employees Union

Preamble

The statutory objects of Ontario's colleges of applied arts and technology are to offer a comprehensive program of career-oriented, post-secondary education and training to assist individuals in finding and keeping employment, to meet the needs of employers and the changing work environment and to support the economic and social development of their local and diverse communities.

The College Employer Council, which represents Ontario's colleges for bargaining purposes, and the Ontario Public Service Employees Union were parties to a collective agreement for full-time academic staff that expired on September 30, 2017. The approximately 12,225 faculty (composed of teachers, counsellors and librarians) belonging to the bargaining unit covered by that collective agreement work at 24 colleges across the province.

The parties have engaged in collective bargaining for a new collective agreement for almost 5 months, including mediation with the assistance of the Ministry of Labour, but have failed to resolve the issues in dispute. A strike commenced on October 16, 2017, and classes have been cancelled for approximately five weeks. Continuing efforts of the Ministry of Labour to assist the parties in resolving their differences through mediation have proved unsuccessful.

A vote of the members of the bargaining unit in respect of the Council's last offer was conducted by the Ontario Labour Relations Board. That offer was rejected by the members of the bargaining unit. Negotiations have reached an impasse and the parties are deadlocked.

As a result, the education and preparation for employment of over 220,000 full-time students has been disrupted. College students are a diverse group, including recent secondary school graduates and adults strengthening their work skills or seeking retraining, who come from diverse demographic backgrounds. For a significant number of students, the completion of their academic studies and the successful achievement of the program learning outcomes required for job readiness may be at serious risk.

Education by Ontario's colleges of applied arts and technology serves a critical public function. The colleges deliver approximately 2,400 post-secondary programs approved for funding by the Ministry of Advanced Education and Skills Development at more than 125 locations across Ontario. These programs prepare students for entry into the Ontario labour market. Colleges also deliver approximately 1,430 apprenticeship classes for over 25,000 apprentices, about 8,520 of whom were expected to complete their final level of training this fall. The work stoppage has affected over 8,000 Literacy and Basic Skills and Academic Upgrading learners, almost 2,000 Second Career clients attending a training program at a college and over 5,000 active Employment Services clients participating in assisted services delivered by colleges.

This disruption has significant educational, financial and personal implications for students and their families. These negative consequences, particularly for vulnerable students, may be long term in nature. The continuation of this dispute gives rise to serious public interest concerns.

Having regard to these serious circumstances and the deadlock in negotiations, the public interest requires an exceptional and temporary solution to address the matters in dispute so that a new collective agreement may be concluded through a fair process of mediation-arbitration, so that faculty and students can return to class and so that the colleges can resume providing post-secondary education and preparation for employment.

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

INTERPRETATION AND APPLICATION

Definitions

1 (1) In this Act,

“bargaining agent” means the Ontario Public Service Employees Union; (“agent négociateur”)

“bargaining unit” means the full-time academic staff bargaining unit described in section 1 of Schedule 1 to the *Colleges Collective Bargaining Act, 2008*; (“unité de négociation”)

“employees” means the employees of an employer who are represented by the bargaining agent; (“employés”)

“Minister” means the Minister of Labour; (“ministre”)

“new collective agreement” means a collective agreement that,

- (a) applies to the employees in the bargaining unit, and
- (b) is executed after the day this Act receives Royal Assent or comes into force under subsection 19 (5); (“nouvelle convention collective”)

“parties”, when used in relation to a dispute, a mediation-arbitration proceeding dealing with the dispute or a new collective agreement, means the Council and the bargaining agent. (“parties”)

Interpretation

(2) Expressions used in this Act have the same meaning as in the *Colleges Collective Bargaining Act, 2008*, unless the context requires otherwise.

Application of Act

2 (1) This Act applies to the Council, the employers, the bargaining agent and the employees in the bargaining unit if the Council and the bargaining agent have not executed a collective agreement after September 30, 2017 and before the day this Act receives Royal Assent with respect to the bargaining unit.

Application of *Colleges Collective Bargaining Act, 2008*

(2) Except as modified by this Act, the *Colleges Collective Bargaining Act, 2008* applies to the Council, the employers, the bargaining agent and the employees in the bargaining unit.

Conflict

(3) In the event of a conflict between this Act and the *Colleges Collective Bargaining Act, 2008*, this Act prevails.

STRIKES AND LOCK-OUTS

Duties of employers, bargaining agent, etc.

Operation of undertakings

3 (1) As soon as this Act receives Royal Assent, each employer shall use all reasonable efforts to operate and continue to operate its undertakings, including any operations interrupted during any lock-out or strike that is in effect immediately before this Act receives Royal Assent.

Assistance from the Council

(2) As soon as this Act receives Royal Assent, the Council shall use all reasonable efforts to assist the employers in complying with subsection (1).

Termination of lock-out

(3) As soon as this Act receives Royal Assent, the Council and each employer shall terminate any lock-out of employees in the bargaining unit that is in effect immediately before this Act receives Royal Assent.

Termination of strike

(4) As soon as this Act receives Royal Assent, the bargaining agent shall terminate any strike by employees in the bargaining unit that is in effect immediately before this Act receives Royal Assent.

Same

(5) As soon as this Act receives Royal Assent, each employee in the bargaining unit shall terminate any strike that is in effect before this Act receives Royal Assent and shall, without delay, resume the performance of the duties of his or her employment or shall continue performing them, as the case may be.

Exception

(6) Subsection (5) does not preclude an employee in the bargaining unit from not reporting to work and performing his or her duties for reasons of health or by mutual consent of the employee and the employer.

Prohibition re strike

4 (1) Subject to section 6, no employee in the bargaining unit shall strike and no person or employee organization shall call or authorize or threaten to call or authorize a strike by any employees in the bargaining unit.

Same

(2) Subject to section 6, no officer, official or agent of an employee organization shall counsel, procure, support or encourage a strike by any employees in the bargaining unit.

Prohibition re lock-out

5 (1) Subject to section 6, the Council or an employer shall not lock out or threaten to lock out any employees in the bargaining unit.

Same

(2) Subject to section 6, no officer, official or agent of the Council or of an employer shall counsel, procure, support or encourage a lock-out of any employees in the bargaining unit.

Strike or lock-out after new collective agreement

6 After a new collective agreement is executed by the parties or comes into force under subsection 19 (5), the *Colleges Collective Bargaining Act, 2008* governs the right of the employees in the bargaining unit to strike and the right of the Council or an employer to lock out those employees.

Offence

7 (1) A person, including the employer, or an employee organization who contravenes or fails to comply with section 3, 4 or 5 is guilty of an offence and on conviction is liable,

- (a) in the case of an individual, to a fine of not more than \$1,000; and
- (b) in any other case, to a fine of not more than \$25,000.

Continuing offence

(2) Each day of a contravention or failure to comply constitutes a separate offence.

Related matters

(3) Subsections 63 (4) and (5) and sections 65, 67 and 75 of the *Colleges Collective Bargaining Act, 2008* apply with necessary modifications with respect to an offence under this Act.

Deeming provision: unlawful strike or lock-out

8 A strike or lock-out in contravention of section 3, 4 or 5 is deemed to be an unlawful strike or lock-out for the purposes of the *Colleges Collective Bargaining Act, 2008*.

Terms of employment

9 Until a new collective agreement is executed by the parties or comes into force under subsection 19 (5), the terms and conditions of employment that applied with respect to the employees in the bargaining unit on the day before the first day on which it became lawful for any of the employees to strike continue to apply, unless the parties agree otherwise.

MEDIATION-ARBITRATION

Deemed referral to mediation-arbitration

10 If this Act applies to the Council, the employers and the bargaining agent in respect of the bargaining unit, the parties are deemed to have referred to a mediator-arbitrator, on the day this Act receives Royal Assent, all matters remaining in dispute between them with respect to the terms and conditions of employment of the employees in the bargaining unit.

Appointment of mediator-arbitrator

11 (1) On or before the fifth day after this Act receives Royal Assent, the parties shall jointly appoint the mediator-arbitrator referred to in section 10 and shall forthwith notify the Minister of the name and address of the person appointed.

Same

(2) If the parties fail to notify the Minister as subsection (1) requires, the Minister shall forthwith appoint the mediator-arbitrator and notify the parties of the name and address of the person appointed.

Replacement

(3) If the parties notify the Minister that they agree that the mediator-arbitrator is unable or unwilling to perform his or her duties so as to make an award, the parties shall, on or before the fifth day after the notification, jointly appoint a new mediator-arbitrator and shall forthwith notify the Minister of the name and address of the person appointed.

Same

(4) If the Minister notifies the parties that in the Minister's opinion the mediator-arbitrator is unable or unwilling to perform his or her duties so as to make an award, the parties shall, on or before the fifth day after the notification, jointly appoint a new mediator-arbitrator and shall forthwith notify the Minister of the name and address of the person appointed.

Same

(5) If the parties fail to notify the Minister as subsection (3) or (4) requires, the Minister shall forthwith appoint a new mediator-arbitrator and notify the parties of the name and address of the person appointed.

Same

(6) The mediation-arbitration process shall begin anew on the appointment of a new mediator-arbitrator under subsection (3), (4) or (5).

Minister's power

(7) The Minister may appoint as a mediator-arbitrator a person who is, in the opinion of the Minister, qualified to act.

Appointment and proceedings of mediator-arbitrator not subject to review

(8) It is conclusively presumed that the appointment of a mediator-arbitrator made under this section is properly made, and no application shall be made to question the appointment or to prohibit or restrain any of the mediator-arbitrator's proceedings.

Jurisdiction of mediator-arbitrator

12 (1) The mediator-arbitrator has exclusive jurisdiction to determine all matters that he or she considers necessary to conclude a new collective agreement.

Time period

(2) The mediator-arbitrator remains seized of and may deal with all matters within his or her jurisdiction until the new collective agreement is executed by the parties or comes into force under subsection 19 (5).

Mediation

(3) The mediator-arbitrator may try to assist the parties to settle any matter that he or she considers necessary to conclude the new collective agreement.

Notice, matters agreed on

(4) As soon as possible after a mediator-arbitrator is appointed, but in any event no later than seven days after the appointment, the parties shall give the mediator-arbitrator written notice of the matters on which they reached agreement before the appointment.

Same

(5) The parties may at any time give the mediator-arbitrator written notice of matters on which they reach agreement after the appointment of a mediator-arbitrator.

Time limits

13 (1) The mediator-arbitrator shall begin the mediation-arbitration proceeding within 30 days after being appointed and shall make all awards under this Act within 90 days after being appointed, unless the proceeding is terminated under subsection 18 (2).

Extensions

(2) The parties and the mediator-arbitrator may, by written agreement, extend a time period specified in subsection (1) either before or after it expires.

Procedure

14 (1) The mediator-arbitrator shall determine the procedure for the mediation-arbitration but shall permit the parties to present evidence and make submissions.

Application of s. 14 (12) (a) to (i) of *Colleges Collective Bargaining Act, 2008*

(2) Clauses 14 (12) (a) to (i) of the *Colleges Collective Bargaining Act, 2008* apply, with necessary modifications, to proceedings before the mediator-arbitrator and to his or her decisions.

Exclusions

(3) The *Arbitration Act, 1991* and the *Statutory Powers Procedure Act* do not apply to mediation-arbitration proceedings under this Act.

Award of mediator-arbitrator

15 (1) An award by the mediator-arbitrator under this Act shall address all the matters to be dealt with in the new collective agreement with respect to the parties and the bargaining unit.

Criteria

(2) In making an award, the mediator-arbitrator shall take into consideration all factors that he or she considers relevant, including the following criteria:

1. The employers' ability to pay in light of their fiscal situations.

2. The extent to which services may have to be reduced, in light of the award, if current funding and taxation levels are not increased.
3. The economic situation in Ontario.
4. A comparison, as between the employees and comparable employees in the public and private sectors, of the nature of the work performed and of the terms and conditions of employment.
5. The employers' ability to attract and retain qualified employees.
6. The purposes of the *Public Sector Dispute Resolution Act, 1997*.

Interpretation

(3) The definition of "employees" in subsection 1 (1) does not apply for the purpose of subsection (2).

Retroactive alteration of terms of employment

(4) The award may provide for the retroactive alteration of one or more terms and conditions of employment, to one or more dates after September 30, 2017, and may do so despite section 9.

Effect of award

16 The award of a mediator-arbitrator under this Act is final and binding on the parties, on the employers and on the employees in the bargaining unit.

Costs

17 Each party shall pay one-half of the fees and expenses of the mediator-arbitrator.

Continued negotiation

18 (1) Until an award is made, nothing in sections 10 to 17 prohibits the parties from continuing to negotiate with a view to making a new collective agreement and they are encouraged to do so.

New collective agreement concluded by parties

(2) If the parties execute a new collective agreement before an award is made, they shall notify the mediator-arbitrator of the fact and the mediation-arbitration proceeding is thereby terminated.

EXECUTION OF NEW COLLECTIVE AGREEMENT

Execution of new collective agreement

19 (1) Within seven days after the mediator-arbitrator makes an award, the parties shall prepare and execute documents giving effect to the award.

Same

(2) The documents required by subsection (1) constitute the new collective agreement between the parties.

Extension

(3) The mediator-arbitrator may extend the period referred to in subsection (1), but the extended period shall end no later than 30 days after the mediator-arbitrator made the award.

Preparation by mediator-arbitrator

(4) If the parties do not prepare and execute the documents as required under subsections (1) and (3), the mediator-arbitrator shall prepare the necessary documents and give them to the parties for execution.

Failure to execute

(5) If either party fails to execute the documents prepared by the mediator-arbitrator within seven days after receiving them, the documents come into force as though they had been executed by the parties and those documents constitute the new collective agreement between the parties.

REPEAL

Repeal

20 This Act is repealed on a day to be named by proclamation of the Lieutenant Governor.

COMMENCEMENT AND SHORT TITLE

Commencement

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

Short title

22 The short title of this Act is the *Colleges of Applied Arts and Technology Labour Dispute Resolution Act, 2017*.