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# Bill 92

## **An Act to amend the Labour Relations Act, 1995 with respect to replacement workers**

**Ms F. Gélinas**

**Private Member's Bill**

1st Reading      March 28, 2019

2nd Reading

3rd Reading

Royal Assent



#### EXPLANATORY NOTE

The purpose of the Bill is to restore the provisions that were incorporated into the *Labour Relations Act* by the *Labour Relations and Employment Statute Law Amendment Act, 1992* and subsequently repealed by the *Labour Relations Act, 1995*.

The purpose of the provisions being restored is to prevent an employer from replacing striking or locked-out employees with replacement workers except in specified emergency situations.

**An Act to amend the Labour Relations Act, 1995 with respect to replacement workers**

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 sections:****Definitions**

**73.1** (1) In this section,

“employer” means the employer whose employees are locked out or are on strike and includes an employers’ organization or person acting on behalf of either of them; (“employeur”)

“person” includes,

- (a) a person who exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations, and
- (b) an independent contractor; (“personne”)

“place of operations in respect of which the strike or lock-out is taking place” includes any place where employees in the bargaining unit who are on strike or who are locked out would ordinarily perform their work. (“lieu d’exploitation à l’égard duquel la grève ou le lock-out a lieu”)

**Application**

(2) This section applies during any lock-out of employees by an employer or during a lawful strike that is authorized in the following way:

1. A strike vote was taken after the notice of desire to bargain was given or bargaining had begun, whichever occurred first.
2. The strike vote was conducted in accordance with this Act.
3. At least 60 per cent of those voting authorized the strike.

**Interpretation**

(3) For the purposes of this section and section 73.2, a bargaining unit is considered to be,

- (a) locked out if any employees in the bargaining unit are locked out; and
- (b) on strike if any employees in the bargaining unit are on strike and the union has given the employer notice in writing that the bargaining unit is on strike.

**Use of bargaining unit employees**

(4) The employer shall not use the services of an employee in the bargaining unit that is on strike or is locked out, including an employee receiving benefits under the *Workplace Safety and Insurance Act, 1997*.

**Use of newly hired employees, etc.**

(5) The employer shall not use a person described in paragraph 1 at any place of operations operated by the employer to perform the work described in paragraph 2 or 3:

1. A person, whether the person is paid or not, who is hired or engaged by the employer after the earlier of the date on which the notice of desire to bargain is given and the date on which bargaining begins.
2. The work of an employee in the bargaining unit that is on strike or locked out.
3. The work ordinarily done by a person who is performing the work of an employee described in paragraph 2.

**Use of others at the strike, etc., location**

(6) The employer shall not use any of the following persons to perform the work described in paragraph 2 or 3 of subsection (5) at a place of operations in respect of which the strike or lock-out is taking place:

1. An employee or other person, whether paid or not, who ordinarily works at another of the employer's places of operations, other than a person who exercises managerial functions.
2. A person who exercises managerial functions, whether paid or not, who ordinarily works at a place of operations other than a place of operations in respect of which the strike or lock-out is taking place.
3. An employee or other person, whether paid or not, who is transferred to a place of operations in respect of which the strike or lock-out is taking place, if he or she was transferred after the earlier of the date on which the notice of desire to bargain is given and the date on which bargaining begins.
4. A person, whether paid or not, other than an employee of the employer or a person described in subsection 1 (3).
5. A person, whether paid or not, who is employed, engaged or supplied to the employer by another person or employer.

#### **Prohibition re replacement work**

(7) The employer shall not require an employee who works at a place of operations in respect of which the strike or lock-out is taking place to perform any work of an employee in the bargaining unit that is on strike or is locked out without the agreement of the employee.

#### **No reprisals**

(8) The employer shall not, because of a person's refusal to perform any or all of the work of an employee in the bargaining unit that is on strike or is locked out,

- (a) refuse to employ or continue to employ the person;
- (b) threaten to dismiss the person or otherwise threaten the person;
- (c) discriminate against the person in regard to employment or a term or condition of employment; or
- (d) intimidate or coerce or impose a pecuniary or other penalty on the person.

#### **Burden of proof**

(9) On an application or complaint relating to this section, the burden of proof that an employer did not act contrary to this section lies upon the employer.

#### **Definition**

**73.2** (1) In this section,

"specified replacement worker" means a person who is described in subsection 73.1 (5) or (6) as one who must not be used to perform the work described in paragraph 2 or 3 of subsection 73.1 (5).

#### **Permitted use of specified replacement workers**

(2) Despite section 73.1, specified replacement workers may be used in the circumstances described in this section to perform the work of employees in the bargaining unit that is on strike or is locked out but only to the extent necessary to enable the employer to provide the following services:

1. Secure custody, open custody or the temporary detention of persons under a law of Canada or of the Province of Ontario or under a court order or warrant.
2. Residential care for persons with behavioural or emotional problems or with a disability as defined in section 2 of the *Accessibility for Ontarians with Disabilities Act, 2005*.
3. Residential care for children who are in need of protection as described in subsection 74 (2) of the *Child, Youth and Family Services Act, 2017*.
4. Services provided to persons described in paragraph 2 or 3 to assist them to live outside a residential care facility.
5. Emergency shelter or crisis intervention services to persons described in paragraph 2 or 3.
6. Emergency shelter or crisis intervention services to victims of violence.
7. Emergency services relating to the investigation of allegations that a child may be in need of protection as described in subsection 74 (2) of the *Child, Youth and Family Services Act, 2017*.
8. Emergency dispatch communication services, ambulance services or a first aid clinic or station.

#### **Same**

(3) Despite section 73.1, specified replacement workers may also be used in the circumstances described in this section to perform the work of employees in the bargaining unit that is on strike or locked out, but only to the extent necessary to enable the employer to prevent,

- (a) danger to life, health or safety;

- (b) the destruction or serious deterioration of machinery, equipment or premises; or
- (c) serious environmental damage.

#### **Notice to trade union**

(4) An employer shall notify the trade union if the employer wishes to use the services of specified replacement workers to perform the work described in subsection (2) or (3) and shall give particulars to the type of work, level of service and number of specified replacement workers the employer wishes to use.

#### **Time for giving notice**

(5) The employer may notify the trade union at any time during bargaining, but in any event, shall do so promptly after a conciliation officer is appointed.

#### **Same, emergency**

(6) In an emergency or in circumstances which could not reasonably have been foreseen, the employer shall notify the trade union as soon as possible after determining that he, she or it wishes to use the services of specified replacement workers.

#### **Consent**

(7) After receiving the employer's notice, the trade union may consent to the use of bargaining unit employees instead of specified replacement workers to perform some or all of the proposed work and shall promptly notify the employer as to whether it gives its consent.

#### **Use of bargaining unit employees**

(8) The employer shall use bargaining unit employees to perform the proposed work to the extent that the trade union has given its consent and if the employees are willing and able to do so.

#### **Working conditions**

(9) Unless the parties agree otherwise, the terms and conditions of employment and any rights, privileges or duties of the employer, the trade union or the employees in effect before it became lawful for the trade union to strike or the employer to lock out continue to apply with respect to bargaining unit employees who perform work under subsection (8) while they perform the work.

#### **Priority re replacement workers**

(10) No employer, employers' organization or person acting on behalf of either shall use a specified replacement worker to perform the work described in subsection (2) or (3), unless,

- (a) the employer has notified the trade union that he, she or it wishes to do so;
- (b) the employer has given the trade union reasonable opportunity to consent to the use of bargaining unit employees instead of the specified replacement worker to perform the proposed work; and
- (c) the trade union has not given its consent to the use of bargaining unit employees.

#### **Exception re emergency**

(11) In an emergency, the employer may use a specified replacement worker to perform the work described in subsection (2) or (3) for the period of time required to give notice to the trade union and determine whether the trade union gives its consent to the use of bargaining unit employees.

#### **Application for directions**

(12) On application by the employer or trade union, the Board may,

- (a) determine, during a strike or lock-out, whether the circumstances described in subsection (2) or (3) exist and determine the manner and extent to which the employer may use specified replacement workers to perform the work described in those subsections;
- (b) determine whether the circumstances described in subsection (2) or (3) would exist if a strike or lock-out were to occur and determine the manner and extent to which the employer may use specified replacement workers to perform the work described in those subsections; and
- (c) give such other directions as the Board considers appropriate.

#### **Reconsideration**

(13) On a further application by either party, the Board may modify any determination or direction in view of a change in circumstances.

**Same**

(14) The Board may defer considering an application under subsection (12) or (13) until such time as it considers appropriate.

**Burden of proof**

(15) In an application or a complaint relating to this section, the burden of proof that the circumstances described in subsection (2) or (3) exist lies upon the party alleging that they do.

**Agreement re specified replacement workers**

(16) The employer and the trade union may enter into an agreement governing the use, in the event of a strike or lock-out, of striking or locked-out employees and of specified replacement workers to perform the work described in subsection (2) or (3).

**Formal requirements**

(17) An agreement under subsection (16) must be in writing and signed by the parties or their representatives.

**Same**

(18) An agreement under subsection (16) may provide that any of subsections (4) to (11) do not apply.

**Term of agreement**

(19) An agreement under subsection (16) expires not later than the earlier of,

- (a) the end of the first strike described in subsection 73.1 (2) or lock-out that ends after the parties have entered into the agreement; or
- (b) the day on which the parties next make or renew a collective agreement.

**Prohibited circumstances**

(20) The parties shall not, as a condition of ending a strike or lock-out, enter into an agreement governing the use of specified replacement workers or of bargaining unit employees in any future strike or lock-out, and any such agreement is void.

**Enforcement**

(21) On application of the employer or trade union, the Board may enforce an agreement under subsection (16) and may amend it and make such other orders as it considers appropriate in the circumstances.

**Filing in court**

(22) A party to the decision of the Board made under this section may file it, excluding the reasons, in the prescribed form in the Superior Court of Justice and it shall be entered in the same way as an order of that court and is enforceable as such.

**Reinstatement after lock-out, etc.**

**73.3** (1) If, at the end of a lock-out or lawful strike, the employer and the trade union do not agree about the terms for reinstating employees, the employer shall reinstate them in accordance with this section.

**Same**

(2) Subject to subsections (5) and (6), the employer shall reinstate each striking or locked-out employee to the position that he or she held when the strike or lock-out began.

**Right to displace others**

(3) Striking or locked-out employees are entitled to displace any other persons who were performing the work of striking or locked-out employees during the strike or lock-out.

**Same**

(4) Despite subsection (3), a striking or locked-out employee is not entitled to displace another employee in the bargaining unit who performed work under section 73.2 during the strike or lock-out and whose length of service, as determined under subsection (5), is greater than his or hers.

**Insufficient work**

(5) If there is not sufficient work for all striking or locked-out employees, including employees in the bargaining unit who performed work under section 73.2 during the strike or lock-out, the employer shall reinstate them to employment in the bargaining unit as work becomes available,

- (a) if the collective agreement contains recall provisions that are based on seniority, in accordance with seniority as defined in those provisions and as determined when the strike or lock-out began, in relation to other employees in the bargaining unit who were employed at the time the strike or lock-out began; or

- (b) if there are no such recall provisions, in accordance with each employee's length of service, as determined when the strike or lock-out began, in relation to other employees in the bargaining unit who were employed at the time the strike or lock-out began.

#### **Starting up operations**

- (6) Subsection (5) does not apply if an employee is not able to perform work required to start up the employer's operations, but only for the period of time required to start up the operations.

#### **Continuation of benefits**

- 73.4** (1) This section applies with respect to employment benefits, other than pension benefits, normally provided directly or indirectly by the employer to the employees.

#### **Lawful strike or lock-out**

- (2) This section applies only when it is lawful for an employer to lock out employees or for employees to strike.

#### **Payments**

- (3) For the purpose of continuing employment benefits, including coverage under insurance plans, the trade union may tender payments sufficient to continue the benefits to the employer or to any person who was, before a strike or lock-out became lawful, obligated to receive such payments.

#### **Same**

- (4) The employer or other person described in subsection (3) shall accept payments tendered by the trade union under that subsection and, upon receiving payment, shall take such steps as may be necessary to continue in effect the employment benefits, including coverage under insurance plans.

#### **Cancellation of benefits**

- (5) No person shall cancel or threaten to cancel an employee's employment benefits, including coverage under insurance plans, if the trade union tenders payments under subsection (3) sufficient to continue the employee's entitlement to the benefits or coverage.

#### **Denial of benefits**

- (6) No person shall deny or threaten to deny an employment benefit, including coverage under an insurance plan, to an employee if the employee was entitled to make a claim for that type of benefit or coverage before a strike or lock-out became lawful.

#### **Effect of contract**

- (7) Subsections (4), (5) and (6) apply despite any provision to the contrary in any contract.

#### **Commencement**

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

#### **Short title**

**3 The short title of this Act is the *Labour Relations Amendment Act (Replacement Workers), 2019*.**