

CONFIDENTIAL

York University Labour Disputes Resolution Act, 2009

EXPLANATORY NOTE

The Bill addresses the labour disputes between York University and Canadian Union of Public Employees, Local 3903. It requires the termination of any strike or lock-out and provides a mechanism for achieving new collective agreements.

**An Act to resolve labour disputes between York University and
Canadian Union of Public Employees, Local 3903**

Preamble

York University and the Canadian Union of Public Employees, Local 3903 were parties to collective agreements that have expired.

The parties have engaged in collective bargaining for approximately seven months for new collective agreements, including conciliation and mediation with the assistance of Ministry of Labour staff, but have failed to resolve their disputes. A vote of the members of the bargaining units represented by the Union in respect of the University's last offer was conducted. That offer was rejected by all of the bargaining units. Continuing efforts of the Ministry of Labour to assist the parties in resolving their differences through mediation have proved unsuccessful. Negotiations have reached an impasse and the parties are clearly deadlocked.

The strike has been ongoing and classes have been cancelled for more than eleven weeks. The education of over 45,000 students has been disrupted and the completion of the academic year is at serious risk. Post-secondary education serves a critical public function. Furthermore, a lengthy extension or loss of an academic year has significant personal, educational, social and financial implications for students and their families as well as serious organizational and economic impacts on the University and the broader public. These negative consequences may be long term in nature and the repercussions could extend beyond the parties, the students and their families. The continuation of these disputes and the resulting disruption in education and its corresponding effects give rise to serious public interest concerns. The interests of students, families and the broader community require that these disputes be resolved. Having regard to these serious circumstances and the clear deadlock in negotiations, the public interest requires an exceptional and temporary solution to address the matters in dispute so that new collective agreements may be concluded through a fair process of mediation-arbitration, staff and students can return to class and the University can resume providing post secondary education.

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 Canadian Union of Public Employees, Local 3903; (“agent négociateur”)

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

“employer” means York University; (“employeur”)

“listed bargaining unit” means any of the following:

1. The bargaining unit referred to as Unit 1 in the collective agreement between the employer and the bargaining agent effective from November 16, 2005 to August 31, 2008 as described in Article 3 of that agreement which unit is composed of all part-time employees registered at York University as full-time graduate students and employed in teaching, demonstrating, tutoring or marking.
2. The bargaining unit referred to as Unit 2 in the collective agreement between the employer and the bargaining agent effective from November 16, 2005 to August 31, 2008 as described in Article 3 of that agreement which unit is composed of all employees employed in teaching, demonstrating, tutoring or marking, save and except,
 - i. persons who are employed in the Faculty of Law, the Faculty of Administrative Studies, the Department of Administrative Studies in Atkinson College, the Centre for Continuing Education or in courses intended primarily for students who are not registered in a degree credit program,
 - ii. full-time graduate students registered at York University,

- iii. persons holding part-time appointments at or above the rank of lecturer,
 - iv. persons whose salaries are paid other than from operating funds,
 - v. persons holding full-time academic appointments at the University,
 - vi. persons employed in a confidential labour relations capacity,
 - vii. persons engaged in graduate level teaching in the Faculty of Environmental Studies, and
 - viii. retirees from the full-time faculty of York University whose terms and conditions of employment are governed by the terms of the YUFA collective agreement.
3. The bargaining unit referred to as Unit 3 in the collective agreement between the employer and the bargaining agent effective from November 16, 2005 to August 31, 2008 as described in Article 3 of that agreement which unit is composed of all graduate students registered as full-time at York University who are receiving financial assistance from or through the University and in connection with such assistance are employed in administrative, clerical and research work save and except research assistants, supervisors, persons above the rank of supervisor, and persons for whom a trade union held bargaining rights at the date of application by the bargaining agent for certification in respect of this unit; (“unité de négociation désignée”)

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

“new collective agreement”, when used with respect to a listed bargaining unit, means a collective agreement that,

- (a) applies to the employees in that 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 employer and the bargaining agent. (“parties”)

Interpretation

(2) Expressions used in this Act have the same meaning as in the *Labour Relations Act, 1995*, unless the context requires otherwise.

Application of Act

2. (1) This Act applies to the employer, the bargaining agent and the employees in a listed bargaining unit if the employer and the bargaining agent have not executed a collective agreement after August 31, 2008 and before the day this Act receives Royal Assent with respect to that unit.

Application of *Labour Relations Act, 1995*

(2) Except as modified by this Act, the *Labour Relations Act, 1995* applies to the employer, the bargaining agent and the employees.

Conflict

(3) In the event of a conflict between this Act and the *Labour Relations Act, 1995*, this Act prevails.

STRIKES AND LOCK-OUTS

Duties of employer and bargaining agent

Operation of undertakings

3. (1) As soon as this Act receives Royal Assent, the 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.

Termination of lock-out

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

Termination of strike

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

Same

(4) As soon as this Act receives Royal Assent, each employee 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

(5) Subsection (4) does not preclude an employee 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 shall strike and no person or trade union shall call or authorize or threaten to call or authorize a strike by any employees.

Same

(2) Subject to section 6, no officer, official or agent of a trade union shall counsel, procure, support or encourage a strike by any employees.

Prohibition re lock-out

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

Same

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

Strike or lock-out after new collective agreement

6. After a new collective agreement with respect to a listed bargaining unit is executed by the parties or comes into force under subsection 19 (5), the *Labour Relations Act, 1995* governs the right of the employees in that unit to strike and the right of the employer to lock out those employees.

Offence

7. (1) A person, including the employer, or a trade union 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 \$2,000; 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) Subsection 104 (3) and sections 105, 106 and 107 of the *Labour Relations Act, 1995* 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 *Labour Relations Act, 1995*.

Terms of employment

9. Until a new collective agreement with respect to a listed bargaining unit 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 that unit on the day before the first day on which it became lawful for any of those 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 employer and the bargaining agent in respect of a listed 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 that 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.

Consolidation

(2) Without limiting the generality of subsection (1), a person who is the mediator-arbitrator for more than one mediation-arbitration proceeding under this Act may consolidate any of the proceedings or parts of the proceedings as he or she considers advisable.

Application of s. 48 (12) (a) to (i) of *Labour Relations Act, 1995*

(3) Clauses 48 (12) (a) to (i) of the *Labour Relations Act, 1995* apply, with necessary modifications, to proceedings before the mediator-arbitrator and to his or her decisions.

Exclusions

(4) 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 a listed 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 employer's ability to pay in light of its fiscal situation.
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 and in the Greater Toronto Area.
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 employer's ability to attract and retain qualified employees.
6. The purposes of the *Public Sector Dispute Resolution Act, 1997*.

Retroactive alteration of terms of employment

(3) The award may provide for the retroactive alteration of one or more terms and conditions of employment, to one or more dates after August 31, 2008, 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 and on the employees.

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, COMMENCEMENT AND SHORT TITLE

Repeal

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

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 *York University Labour Disputes Resolution Act, 2009*.