

1992

CHAPTER C-29.11

An Act respecting Labour Relations in the Construction Industry

(Assented to August 28, 1992)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

SHORT TITLE, INTERPRETATION AND APPLICATION

Short title

1 This Act may be cited as *The Construction Industry Labour Relations Act, 1992*.

Interpretation

2 In this Act:

- (a) **"appropriate trade division"** means a trade division that is determined to be an appropriate trade division pursuant to section 9;
- (b) **"bargaining collectively"** means bargaining collectively as defined in *The Trade Union Act*;
- (c) **"board"** means the Labour Relations Board continued pursuant to section 4 of *The Trade Union Act*;
- (d) **"collective bargaining agreement"** means a collective bargaining agreement as defined in *The Trade Union Act*;
- (e) **"construction industry"**:
 - (i) means the industry in which the activities of constructing, erecting, reconstructing, altering, remodelling, repairing, revamping, renovating, maintaining, decorating or demolishing of any building, structure, road, sewer, water main, pipeline, tunnel, shaft, bridge, wharf, pier, canal, dam or any other work or any part of a work are undertaken; and
 - (ii) includes all activities undertaken with respect to all machinery, plant, fixtures, facilities, equipment, systems and processes contained in or used in connection with a work mentioned in subclause (i);
- (f) **"department"** means the department over which the minister presides;
- (g) **"employers' organization"** means an organization of unionized employers that has, as one of its objectives, the objective of bargaining collectively on behalf of unionized employers;
- (h) **"jurisdictional assignment plan"** means a plan established in the regulations that creates a mechanism for the resolution of a jurisdictional dispute;
- (i) **"jurisdictional dispute"** means a dispute between two or more trade unions over the assignment of work to trade union members or to workers of a particular trade or craft;
- (j) **"minister"** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (k) **"national collective agreement"** means a collective bargaining agreement negotiated between a trade union and a group of employers that applies in two or more jurisdictions in Canada;
- (l) **"project collective agreement"** means a collective bargaining agreement negotiated among a trade union or unions, a representative employers' organization or organizations and a project owner or project owners, that is to be effective during the term of a project;
- (m) **"representative employers' organization"** means an employers' organization that is designated by the minister pursuant to section 10 or determined by an order of the board pursuant to section 11 to be the exclusive agent to bargain collectively on behalf of all

unionized employers in a trade division;

(n) **"rights, duties and obligations"** means the rights, duties and obligations imposed by or arising pursuant to this Act or *The Trade Union Act*;

(o) **"sector of the construction industry"** means any of the following sectors of the construction industry:

- (i) the commercial, institutional and industrial sector;
- (ii) the residential sector;
- (iii) the sewer, tunnel and water main sector;
- (iv) the pipeline sector;
- (v) the roadbuilding sector;
- (vi) the powerline transmission sector;

(p) **"trade division"** means all unionized employers in a sector or sectors of the construction industry that are:

- (i) in a trade; or
- (ii) in an identifiable class or group of unionized employers in a trade;

(q) **"trade union"** includes all of the locals of a trade union, where more than one local of the trade union has established the right to bargain collectively on behalf of the unionized employees of unionized employers in a trade division;

(r) **"unionized employee"** means an employee who is employed by a unionized employer and with respect to whom a trade union has established the right to bargain collectively with the unionized employer;

(s) **"unionized employer"** means an employer in a trade division with respect to whom a trade union has established the right to bargain collectively on behalf of the unionized employees in that trade division:

- (i) pursuant to an order of the board made pursuant to clause 5(a), (b) or (c) of *The Trade Union Act*; or
- (ii) as a result of the employer's having recognized the trade union as the agent to bargain collectively on behalf of those unionized employees.

Application

3 This Act applies to the construction industry in Saskatchewan.

Construction of Act

4 This Act shall be construed so as to implement bargaining collectively by trade on a province-wide basis between an employers' organization and a trade union with respect to a trade division.

RIGHTS OF UNIONIZED EMPLOYERS

Organizing, bargaining collectively

5(1) Subject to this Act, and in the manner provided by this Act, unionized employers have the right:

- (a) to organize in and to form, join or assist an employers' organization; and
- (b) to bargain collectively through an employers' organization of their own choosing.

(2) No representative employers' organization shall merge or amalgamate with any other employers' organization.

(3) No right, duty or obligation of a representative employers' organization is assignable or transferrable to any other employers' organization.

(4) Where an employer is an employer with respect to whom an employers' organization is designated or determined to be the representative employers' organization, the provisions of *The Trade Union Act* that relate to an employer apply, with any necessary modification, to that representative employers' organization.

BOARD

Powers of the board

6(1) In addition to the powers conferred on it by this Act, the board has all the powers conferred on it by *The Trade Union Act*, and the orders of the board pursuant to this Act are enforceable in the same manner as orders of the board pursuant to *The Trade Union Act*.

(2) In addition to any other order that it may make pursuant to this Act, the board may make orders:

- (a) determining whether an organization is an employers' organization;
 - (b) determining whether an employer is a unionized employer;
 - (c) determining whether an employee is a unionized employee;
 - (d) determining whether an unfair labour practice has occurred;
 - (e) determining whether this Act is being or has been contravened;
 - (f) requiring compliance with this Act, the regulations or any decision of the board with respect to a matter before the board.
- (3) The board may determine any question of fact that is necessary to its jurisdiction.

Determining appropriate unit

7 Where a trade union applies pursuant to *The Trade Union Act* for certification as the bargaining agent of the employees of an employer in the construction industry, the board shall determine the unit of employees that is appropriate for collective bargaining by reference to the geographical jurisdiction of the trade union applying, and the board shall not confine the unit to a particular project.

Finality of board orders

8 There is no appeal from an order or decision of the board pursuant to this Act, and the proceedings, orders and decisions of the board are not reviewable by any court of law or by any certiorari, mandamus, prohibition, injunction or any other proceeding.

APPROPRIATE TRADE DIVISION

Appropriate trade division

9(1) The minister may determine a trade division to be an appropriate trade division for the purposes of this Act.

(2) Before making a determination pursuant to subsection (1), the minister may conduct, or cause to be conducted, any inquiry or consultation that the minister considers necessary.

(3) In making a determination pursuant to subsection (1), the minister shall recognize an agreement between unionized employers and a trade union or unions as to the appropriate trade division for the purposes of this Act.

(4) The minister shall consider a request by a unionized employer, a representative employers' organization or a trade union to make a determination pursuant to subsection (1) and make a determination within 90 days after the receipt of the request.

(5) The minister may make a determination pursuant to subsection (1) with respect to one or more sectors of the construction industry.

(6) Where the minister considers it appropriate to do so, the minister may amend a determination pursuant to subsection (1).

REPRESENTATIVE EMPLOYERS' ORGANIZATIONS

Designation by minister

10(1) Where the minister makes a determination of an appropriate trade division pursuant to section 9, the minister:

- (a) subject to subsection (3), may designate an employers' organization as the representative employers' organization to act as the exclusive agent to bargain collectively on behalf of all unionized employers in that appropriate trade division; and
- (b) may make that designation subject to any terms and conditions that the minister considers appropriate.

- (2) An employers' organization that wishes to be designated by the minister pursuant to subsection (1) shall, within 30 days after the day on which the minister determines the trade division to be an appropriate trade division, file with the minister:
 - (a) a notice stating that it wishes to be so designated; and
 - (b) a copy of its constitution and bylaws.
- (3) In determining which employers' organization to designate as the representative employers' organization pursuant to subsection (1), the minister:
 - (a) may conduct or cause to be conducted any inquiry or consultation with unionized employers, employers' organizations and trade unions that the minister considers necessary;
 - (b) shall consider the representative character of any employers' organization that has given notice that it wishes to be designated.

Determination by board

- 11(1) In this section, "**unionized employer**" means a unionized employer who employs one or more unionized employees on the day on which an application pursuant to this section is made.
- (2) Subject to subsections (4) and (5), on or after November 1, 1992, an employers' organization that claims to represent a majority of the unionized employers in a trade division may make an application to the board for an order determining it to be the representative employers' organization for all unionized employers in that trade division.
- (3) An application pursuant to subsection (2) is to be made in accordance with the regulations made by the board.
- (4) An application pursuant to subsection (2) may be made only during the month of January in any year where the application concerns a trade division for which:
 - (a) the minister has previously designated another employers' organization as the representative employers' organization pursuant to section 10; or
 - (b) the board has previously determined that another employers' organization is the representative employers' organization pursuant to subsection (2).
- (5) No application mentioned in subsection (4) shall be made before January 1, 1994.
- (6) Where an application is made pursuant to subsection (2), the board may make orders:
 - (a) determining the trade division that is appropriate for the purposes of bargaining collectively;
 - (b) determining which employers' organization represents, in the opinion of the board, a majority of the unionized employers in the trade division; and
 - (c) determining that the employers' organization that represents a majority of the unionized employers in the trade division is the representative employers' organization to act as the exclusive agent to bargain collectively on behalf of all unionized employers in that trade division.

Board may amend or vary

- 12 On or after January 1, 1994, the board may amend or vary an order made by it pursuant to section 11 or a designation made by the minister pursuant to section 10 where:
 - (a) the representative employers' organization and the trade union affected agree to the amendment or variation; or
 - (b) the amendment or variation is considered by the board to be necessary for the purpose of clarifying or correcting the order or the designation, as the case may be.

Vote

- 13(1) For the purposes of determining the employers' organization that represents a majority of unionized employers in a trade division, the board may direct a vote to be taken of all unionized employers eligible to vote to determine the question.
- (2) In a vote pursuant to subsection (1), a majority of the unionized employers who vote shall determine the employers' organization that represents the majority of unionized employers.
- (3) A vote pursuant to this section is to be taken by secret ballot.
- (4) The board or a person appointed by the board shall conduct the taking of the vote and the

counting of the ballots cast.

(5) No unionized employer who has voted at a vote taken pursuant to this section is competent or compellable to give evidence in any court proceeding as to how he or she voted.

Effect of designation or determination

14 Where an employers' organization is designated or determined to be the representative employers' organization for a trade division:

- (a) all of the rights, duties and obligations of unionized employers in a trade division vest in the representative employers' organization to the extent that is necessary to give effect to this Act;
- (b) the representative employers' organization is the exclusive agent to bargain collectively on behalf of all unionized employers in the trade division;
- (c) a trade union representing the unionized employees in the trade division shall bargain collectively with the representative employers' organization with respect to those unionized employees; and
- (d) a collective bargaining agreement that is made after the designation or determination with any person or organization other than the representative employers' organization is void.

Subsequent employer bound

15(1) Where an employers' organization is designated or determined to be the representative employers' organization with respect to a trade division, clauses 14(a) to (d) apply to:

- (a) an employer who subsequently becomes a unionized employer in that trade division; or
- (b) a unionized employer who subsequently becomes engaged in the construction industry in that trade division.

(2) Where subsection (1) applies, the unionized employer is bound by the terms and conditions of any collective bargaining agreement then in effect between the representative employers' organization and a trade union with respect to that trade division.

Certain provisions void

16(1) Where an employers' organization is designated or determined to be the representative employers' organization for a trade division:

- (a) subject to subsection (2), the representative employers' organization has the authority and the responsibility to negotiate and conclude a collective bargaining agreement on behalf of the unionized employers in the trade division;
- (b) no other employers' organization has the right to interfere with the negotiation of a collective bargaining agreement or veto any proposed collective bargaining agreement negotiated by the representative employers' organization; and
- (c) any provision in the constitution or bylaws of any employers' organization that is contrary to clause (a) or (b) is void.

(2) Where an employers' organization is designated or determined to be the representative employers' organization for more than one trade division, only the unionized employers in one trade division are entitled to make decisions with respect to negotiating and concluding a collective bargaining agreement on behalf of the unionized employers in that trade division.

Certain collective bargaining agreements remain in force

17 Subject to sections 33 and 34 of *The Trade Union Act*, a collective bargaining agreement between a representative employers' organization and a trade union with respect to a trade division remains in force for its term notwithstanding that another employers' organization becomes the representative employers' organization with respect to the trade division.

Spin-off corporations, etc.

18(1) On the application of an employer or a trade union affected, the board may declare more than one corporation, partnership, individual or association to be one unionized employer for the purposes

of this Act and *The Trade Union Act* where:

- (a) in the opinion of the board, associated or related businesses, undertakings or other activities are carried on under common control or direction by or through those corporations, partnerships, individuals or associations; or
 - (b) a corporation, partnership, individual or association is sufficiently related to a unionized employer that, in the opinion of the board, they should be treated as one and the same.
- (2) Subsection (1) applies only to corporations, partnerships, individuals and associations that commence carrying on business, undertakings or other activities in the construction industry after the coming into force of this Act.
- (3) In exercising its discretion pursuant to subsection (1), the board may recognize the practice of non-unionized employers performing work through unionized subsidiaries.
- (4) The effect of a declaration pursuant to subsection (1) is that the corporations, partnerships, individuals and associations:
- (a) constitute a unionized employer in a specified trade division; and
 - (b) are bound by a designation of a representative employers' organization by the minister pursuant to section 10 or a determination of a representative employers' organization pursuant to section 11.
- (5) The board may make an order granting any additional relief that it considers appropriate where:
- (a) the board makes a declaration pursuant to subsection (1); and
 - (b) in the opinion of the board, the associated or related businesses, undertakings or activities are carried on by or through more than one corporation, partnership, individual or association for the purpose of avoiding:
 - (i) the effect of a designation of the minister or an order of the board determining an employers' organization to be the representative employers' organization with respect to a trade division; or
 - (ii) a collective bargaining agreement that is in effect or that may come into effect between the representative employers' organization and a trade union.
- (6) Where the board is considering whether to grant additional relief pursuant to subsection (5), the burden of proof that the associated or related businesses, undertakings or activities are carried on by or through more than one corporation, partnership, individual or association for a purpose other than a purpose set out in subclause (5)(b)(i) or (ii) is on the corporation, partnership, individual or association.
- (7) An order pursuant to subsection (5) may be made effective from a day that is not earlier than the date of the application to the board pursuant to subsection (1).

COUNCIL OF LOCALS OF TRADE UNION

Council of locals

- 19(1) The locals of a trade union shall file with the board an agreement between them setting up a council of locals for the purpose of bargaining collectively with the representative employers' organization for a trade division where:
- (a) an employers' organization has been designated or determined to be the representative employers' organization for the trade division; and
 - (b) more than one local of a trade union has established the right to bargain collectively on behalf of the unionized employees in the trade division.
- (2) An agreement mentioned in subsection (1) must be filed within 90 days after the later of:
- (a) the date of the designation by the minister or order of the board, as the case may be; or
 - (b) November 1, 1992.
- (3) If the locals of the trade union mentioned in subsection (2) fail or refuse to comply with subsection (1) or if the board does not approve the agreement reached by the locals, the board may, by order, prescribe the constitution of a council of the locals for the purpose of bargaining collectively with the representative employers' organization.
- (4) An order of the board made pursuant to subsection (3) is binding on each of the locals of the trade

union.

Effect of agreement

20 Where an agreement setting up a council of locals filed with the board pursuant to subsection 19(2) is approved by the board or the board makes an order prescribing the constitution of a council of locals pursuant to subsection 19(3):

- (a) all of the rights, duties and obligations of locals of the trade union in the trade division vest in the council of locals to the extent that is necessary to give effect to this Act;
- (b) the council of locals is the exclusive agent to bargain collectively on behalf of all unionized employees in the trade division;
- (c) the representative employers' organization shall bargain collectively with the council of locals with respect to the unionized employees in the trade division; and
- (d) a collective bargaining agreement that is made after the agreement is filed with any person or organization other than the council of locals is void.

PROJECT AND NATIONAL COLLECTIVE AGREEMENTS

Certain agreements protected

21 Nothing in this Act prevents:

- (a) the negotiation and operation of a project collective agreement; or
- (b) the operation and renegotiation of a national collective agreement that is in effect immediately prior to the coming into force of this Act.

STRIKES AND LOCKOUTS

Conciliation, strike vote required

22(1) Before a strike or lockout can commence, a trade union or a representative employer's organization shall:

- (a) submit the dispute to conciliation and conclude the conciliation; and
- (b) after the conclusion of conciliation, obtain a mandate for the strike or lockout by conducting a vote in accordance with section 25 or 26, as the case may be.

(2) Nothing in subsection (1) prevents the minister, following the conclusion of conciliation and the issuance of a strike notice or lockout notice pursuant to section 24, from making a further appointment of a conciliator on receipt of a request from either the trade union or the representative employers' organization.

(3) If there is compliance with this section and sections 23 and 24, the further appointment of a conciliator pursuant to subsection (2) does not prevent:

- (a) a trade union from causing a strike; or
- (b) a representative employers' organization from causing a lockout.

Notice of strike or lockout

23(1) Where a majority of the employees voting on a strike vote pursuant to section 25 vote in favour of a strike, no strike may commence unless the trade union representing a majority of the employees:

- (a) gives the representative employers' organization or the agent of the representative employers' organization at least 48 hours' written strike notice of the date and time that the strike will commence; and
- (b) promptly, after service of the notice, notifies the minister or the minister's designate of the date and time that the strike will commence.

(2) Where a majority of the unionized employers voting on a lockout vote pursuant to section 26 vote in favour of a lockout, no lockout may commence unless the representative employers' organization:

- (a) gives the trade union or trade union's agent at least 48 hours' written notice of the date and time that the lockout will commence; and
- (b) promptly, after the service of the notice, notifies the minister or the minister's designate of

the date and time that the lockout will commence.

Selective strikes, lockouts not permitted

24(1) Where a trade union wishes to cause a strike with respect to a representative employers' organization, it shall cause the strike:

(a) with respect to:

(i) all unionized employers in the trade division represented by the representative employers' organization; and

(ii) all the work being performed by the unionized employers mentioned in subclause (i); and

(b) by all unionized employees of the unionized employers mentioned in subclause (a)(i).

(2) Where a representative employers' organization wishes to cause a lockout of unionized employees employed by unionized employers in a trade division, all unionized employees in the trade division shall participate in the lockout and shall lock out all unionized employees.

UNFAIR LABOUR PRACTICES

Unfair labour practice re strike

25 Notwithstanding clause 11(2)(d) of *The Trade Union Act*, it is an unfair labour practice for a trade union, a unionized employee, a person acting on behalf of a trade union or any other person to declare, authorize or take part in a strike unless:

(a) a strike vote is taken by secret ballot among all of the members of the trade union who are eligible to vote and who are or will be directly affected by the result of the collective bargaining with respect to which the vote is taken; and

(b) a majority of the persons who vote pursuant to clause (a) vote in favour of a strike.

Unfair labour practice re lockout

26 It is an unfair labour practice for a representative employers' organization to declare, authorize or take part in a lockout, and for a unionized employer to participate in a lockout, with respect to any unionized employees, unless:

(a) a lockout vote is taken by secret ballot among all unionized employers in the trade division concerned who employ one or more unionized employees on the day on which the vote is taken; and

(b) a majority of the unionized employers who vote pursuant to clause (a) vote in favour of a lockout.

Unfair labour practice re bargaining

27 Subject to section 31, where an employers' organization is designated or determined to be the representative employers' organization with respect to a trade division, it is an unfair labour practice:

(a) for a trade union or any person acting on behalf of a trade union to bargain collectively with any person or organization other than the representative employers' organization with respect to unionized employees in the trade division;

(b) for a unionized employer or any person acting on behalf a unionized employer in the trade division to bargain collectively with a trade union with respect to the unionized employees employed by the unionized employer other than through the representative employers' organization.

Unfair labour practice re council of locals

28 It is an unfair labour practice for a local of a trade union to fail to comply with an order of the board made pursuant to subsection 19(3).

CONTRACT ADMINISTRATION AND INDUSTRY DEVELOPMENT FEES

Fees

- 29(1) Where an employers' organization is designated or determined to be the representative employers' organization with respect to a trade division, every unionized employer in the trade division shall pay any contract administration and industry development fee to the representative employers' organization that may be fixed by the representative employers' organization.
- (2) Where a trade union represents unionized employees of unionized employers in a trade division, every unionized employee in the trade division shall pay any contract administration and industry development fee to the trade union that may be fixed by the trade union.
- (3) Every collective bargaining agreement is deemed to contain provisions requiring the payment of contract administration and industry development fees by employees in accordance with subsection (2).
- (4) To facilitate collection of contract administration and industry development fees, every unionized employer in a trade division shall provide the representative employers' organization and the trade union representing unionized employees of a unionized employer in the trade division with the following information on a monthly basis:
- (a) the number of employees in the trade division that are employed by the unionized employer;
 - (b) the number of hours worked in a month by the unionized employees employed by the unionized employer in the trade division; and
 - (c) any other information that is necessary in the opinion of the representative employers' organization mentioned in subsection (1) or the trade union mentioned in subsection (2) for the calculation of the contract administration and industry development fees that are payable by unionized employers and unionized employees in the trade division.

GENERAL

Ratification votes among unionized employers

30 Every vote taken among unionized employers in a trade division concerning the ratification of a collective bargaining agreement is restricted to unionized employers in that trade division who employ one or more unionized employees on the day the vote is taken.

Grievances

- 31(1) In this section, "**appropriate unit**" means appropriate unit as defined in *The Trade Union Act*.
- (2) Notwithstanding section 14, the responsibility for negotiating the settlement of grievances of employees covered by a collective bargaining agreement or represented by a trade union representing the majority of employees in an appropriate unit is that of the unionized employer.
- (3) Notwithstanding section 20, the responsibility for negotiating the settlement of grievances of employees covered by a collective bargaining agreement or represented by a trade union representing the majority of employees in an appropriate unit is that of the local of the trade union.

Pre-job conferences

32 Nothing in this Act interferes with or prevents the continuation of the practice of holding pre-job conferences in relation to particular projects.

Notices

33 Any notice required or permitted to be given by this Act may be given in the manner provided in section 20 of *The Trade Union Act*.

Regulations

- 34(1) The board may, subject to the approval of the Lieutenant Governor in Council, make regulations:
- (a) respecting the activities of the board;

- (b) governing practices and procedures in proceedings before the board;
 - (c) governing the payment and collection of contract administration and industry development fees.
- (2) For the purpose of carrying out this Act according to its intent, the Lieutenant Governor in Council may make regulations:
- (a) establishing a jurisdictional assignment plan to provide a process for resolving jurisdictional disputes including, without limiting the generality of the foregoing, regulations:
 - (i) prohibiting or requiring specified actions in the event of a jurisdictional dispute and providing for the consequences of failing to comply with a prohibition or requirement;
 - (ii) establishing a process for the hearing and determination of jurisdictional disputes and governing the conduct of those hearings;
 - (iii) providing for the consequences that flow from a decision made as a result of a hearing;
 - (iv) establishing an appeal process;
 - (b) respecting any matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

Offence

- 35 Every person who:
- (a) takes part in, aids, abets, counsels or procures any unfair labour practice or violation of this Act;
 - (b) fails to comply with any order of the board made pursuant to this Act;
- is guilty of an offence and liable on summary conviction to the penalties provided in section 15 of *The Trade Union Act*.

Limitation period

- 36 No prosecution with respect to an alleged offence pursuant to this Act is to be commenced after one year from the day of the commission of the alleged offence.

Transitional

- 37(1) Subject to subsection (5) and to section 34 of *The Trade Union Act*, every collective bargaining agreement between a trade union and a unionized employer that is in force prior to the designation or determination of a representative employers' organization, and every other agreement between a trade union and a unionized employer that governs wages and working conditions and that has been filed with the department, continues in force until the day on which a new collective bargaining agreement between the trade union and the representative employers' organization comes into force.
- (2) Subject to subsection (1), every agreement mentioned in subsection (1) is deemed to expire on the earlier of:
- (a) the expiry date stated in the agreement; and
 - (b) April 30, 1993.
- (3) An agreement mentioned in subsection (1) is deemed to have been negotiated by the representative employers' organization and the trade union representing unionized employees in a trade division.
- (4) After the determination of a trade division and the designation or determination of a representative employers' organization, the trade union and the representative employers' organization:
- (a) may, subject to clause (b), commence collective bargaining at any time; and
 - (b) shall commence collective bargaining not later than April 30, 1993.
- (5) Every collective bargaining agreement that was continued by section 4 of *The Construction Industry Labour Relations Repeal Act* and that was in effect on the day before the coming into force of this section terminates on the coming into force of this section.

Coming into force

38 This Act or any provision of this Act comes into force on a day or days to be fixed by proclamation of the Lieutenant Governor.