2010

CHAPTER 7

An Act to amend *The Construction Industry Labour Relations Act, 1992*

(Assented to May 20, 2010)

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

Short title

1 This Act may be cited as *The Construction Industry Labour Relations Amendment Act, 2010*.

S.S.1992, c.C-29.11 amended

2 *The Construction Industry Labour Relations Act, 1992* is amended in the manner set forth in this Act.

Section 2 amended

3 Section 2 is amended:

(a) by adding the following clause after clause (a):

"(a.1) **'appropriate unit'** means a unit of employees appropriate for the purpose of bargaining collectively**";**

(b) in clause (e):

(i) in subclause (i) by striking out "maintaining,**"; and**

(ii) in subclause (ii) by adding "but does not include maintenance work**" after "**subclause (i)**";**

(c) by repealing clause (f);

(d) by adding the following clause after clause (j):

"(j.1) **'ministry'** means the ministry over which the minister presides**";**

(e) by repealing clause (l) and substituting the following:

"(l) **'project collective agreement'** means a collective bargaining agreement that is to be effective during the term of a project and that is negotiated among:

(i) a trade union or unions;

(ii) where applicable, a representative employers' organization or organizations; and

(iii) a project owner or project owners**"; and**

(f) by repealing clause (m) and substituting the following:

"(m) **'representative employers' organization'** means an employers' organization that is the exclusive agent to bargain collectively on behalf of all unionized employers in a trade division and that results from:

(i) a designation pursuant to section 9.1 or 10; or

(ii) a determination of the board pursuant to section 10.3**".**

Section 3 amended

4 Section 3 is amended by striking out "This Act**" and substituting "**Subject to section 4, this Act**".**

New section 4

5 Section 4 is repealed and the following substituted:

"Purpose and construction of Act

4(1) Subject to subsections (2) and (3), the purpose of this Act is to permit a system of collective bargaining in the construction industry to be conducted by trade on a province-wide basis between an employers' organization and a trade union with respect to a trade division.

(2) Nothing in this Act:

(a) precludes a trade union from seeking an order pursuant to clause 5(a), (b) or (c) of *The Trade Union Act* for an appropriate unit consisting of:

(i) employees of an employer in more than one trade or craft; or

(ii) all employees of an employer; or

(b) limits the right to obtain an order pursuant to clause 5(a), (b) or (c) of *The Trade Union Act* in the construction industry to those trade unions that are referred to in a determination made by the minister pursuant to section 9.

(3) In exercising its powers pursuant to clause 5(a) of *The Trade Union Act*, the board shall make no presumption that a craft unit is a more appropriate unit in the construction industry than any other form of appropriate unit.

(4) This Act does not apply to an employer and a trade union with respect to an order mentioned in clause (2)(a) or (b).

(5) If, after the coming into force of this section, a unionized employer becomes subject to an order mentioned in clause (2)(a) or (b) with respect to its employees, the employer is no longer governed by this Act**".**

New section 5

6 Section 5 is repealed and the following substituted:

"Rights of unionized employers and duties of representative employers' organizations

5(1) Subject to the other provisions of this Act, unionized employers have the right, in the manner set out in this Act:

(a) to organize, and to form, join or assist in, an employers' organization; and

(b) to engage in collective bargaining through an employers' organization of their choosing.

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

(3) No representative employers' organization shall assign or transfer any of its rights, duties or obligations to any other representative employers' organization.

(4) If an employer is represented by a 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.

(5) In discharging the duties of a representative employers' organization pursuant to this Act or *The Trade Union Act*, a representative employers' organization shall not act in a manner that is arbitrary, discriminatory or in bad faith in representing any of the employers on whose behalf it acts**".**

Section 6 amended

7 The following clause is added after clause 6(2)(d):

"(d.1) determining whether the bargaining rights of a trade union in the construction industry have been abandoned in relation to a unionized employer**".**

New section 6.1

8 The following section is added after section 6:

"Abandonment of bargaining rights by trade union

6.1(1) The board may make a determination as to whether a trade union in the construction industry has abandoned its bargaining rights in relation to a unionized employer.

(2) Without limiting the circumstances under which the board may make a determination mentioned in subsection (1), the board may make a determination on an application made by:

(a) a unionized employer to whom the bargaining rights relate;

(b) one or more unionized employees within an appropriate unit of a unionized employer; or

(c) a trade union for the purposes of enforcing its bargaining rights against an employer.

(3) An application for a determination that a trade union has abandoned its bargaining rights may be brought by a unionized employer only in a circumstance where the trade union has been inactive in promoting and enforcing its bargaining rights against the employer for a period of at least three years before the application.

(4) For the purposes of subsection (1):

(a) the board is not limited in the exercise of its jurisdiction by the system of collective bargaining in the construction industry pursuant to this Act or by the absence of employees in the appropriate unit of an employer with an active presence in the construction industry;

(b) there is a presumption that a trade union has abandoned its bargaining rights if it has taken no action to attempt to promote and enforce its bargaining rights against the unionized employer for a period of at least three years;

(c) the board may consider any period of inactivity by a trade union in the promotion and enforcement of its bargaining rights, whether that period occurred before, on or after the coming into force of this section or the filing of any application pursuant to this Act or *The Trade Union Act* respecting that employer; and

(d) the board may determine a date on which a trade union's bargaining rights should be considered to have been abandoned and ceased to be in effect in relation to an employer.

(5) If the board determines that a trade union has abandoned its bargaining rights in relation to a unionized employer, the board may make any order that it considers appropriate in the circumstances to give effect to its determination.

(6) Nothing in this section is to be interpreted as limiting the authority or power of the board to make findings or orders respecting the issue of abandonment of bargaining rights involving employers and trade unions that are not part of the construction industry.

(7) This section applies to every application for a determination that a trade union has abandoned its bargaining rights, whether that application is brought before, on or after the coming into force of this section**".**

New section 7

9 Section 7 is repealed and the following substituted:

"Determining appropriate unit

7 If 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 appropriate unit of employees by reference to whatever factors the board considers relevant to the application, including:

(a) the geographical jurisdiction of the trade union making the application; and

(b) whether the appropriate unit should or should not be confined to a particular project**".**

New section 10.1

10 Section 10.1 is repealed and the following substituted:

"Right to join representative employers' organization

10.1 If a representative employers' organization is designated pursuant to section 9.1 or 10, or is determined by the board pursuant to section 10.3, to act as the exclusive agent to bargain collectively on behalf of all unionized employers in the trade division, each unionized employer in the trade division is entitled to join the representative employers' organization and participate in its activities**".**

Section 10.2 amended

11 Subsection 10.2(2) is amended:

(a) by striking out "and" **after clause (a);**

(b) by adding "and" **after clause (b); and**

(c) by adding the following clause after clause (b):

"(c) within 90 days after the date of its determination in the case of a representative employers' organization that is determined by the board pursuant to section 10.3**".**

New sections 10.3 to 10.5

12 The following sections are added after section 10.2:

"Determination of representative employers' organizations by board

10.3(1) In this section, **'unionized employer'** means a unionized employer who is actively involved in the construction industry in Saskatchewan and who, in the one-year period before the date of an application pursuant to this section, employed one or more unionized employees in the trade division with respect to which the application is made.

(2) Subject to subsections (4) and (5), on and after the coming into force of this section, an employers' organization that claims to represent a majority of the unionized employers in a trade division may apply 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 this section must be made in accordance with any regulations made by the board.

(4) An application pursuant to this section may be made only during the month of January in any year if the application concerns a trade division for which:

(a) another employers' organization has been continued 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 this section.

(5) If an application is made pursuant to this section, the board may make orders:

(a) determining the trade division that is appropriate for the purposes of collective bargaining;

(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.

"Power of board to vary orders

10.4 The board may amend or vary an order made by it pursuant to section 10.3 if:

(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 determination, as the case may be.

"Vote re determining representative employers' organization

10.5(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) For the purposes of a vote pursuant to this section, each employer is entitled to only one vote.

(3) In a vote pursuant to this section, a majority of the unionized employers eligible to vote constitutes a quorum.

(4) In a vote pursuant to this section, a majority of the unionized employers who vote shall determine the employers' organization that represents the majority of unionized employers.

(5) A vote pursuant to this section must be by secret ballot.

(6) The board or a person appointed by the board shall:

(a) conduct the voting; and

(b) count the ballots cast.

(7) A unionized employer who has voted at a vote taken pursuant to this Act is not competent or compellable to give evidence in any court proceedings whatsoever as to how the unionized employer voted**".**

Section 14 amended

13 Section 14 is amended:

(a) in the portion preceding clause (a) by striking out "Where an employers' organization is designated**" and substituting "**If an employers' organization is designated or determined**"; and**

(b) in clause (d) by adding "or determination**" after "**designation**".**

Section 15 amended

14(1) Subsection 15(1) is amended in the portion preceding clause (a) by striking out "Where an employers' organization is designated**" and substituting "**If an employers' organization is designated or determined**".**

(2) Subsection 15(2) is amended by striking out "Where subsection (1) applies**" and substituting "**If subsection (1) applies**".**

Section 16 amended

15(1) Subsection 16(1) is amended in the portion preceding clause (a) by striking out "Where an employers' organization is designated**" and substituting "**If an employers' organization is designated or determined**".**

(2) Subsection 16(2) is amended by striking out "Where an employers' organization is designated**" and substituting "**If an employers' organization is designated or determined**".**

New section 17

16 Section 17 is repealed and the following substituted:

"Certain collective bargaining agreements to 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:

(a) another employers' organization becomes the representative employers' organization with respect to the trade division; or

(b) another trade union represents the unionized employees of an employer**".**

Section 18 amended

17(1) Clause 18(4)(b) is repealed and the following substituted:

"(b) are bound by a designation of a representative employers' organization pursuant to section 9.1 or 10 or by a determination of a representative employers' organization pursuant to section 10.3**".**

(2) Subclause 18(5)(b)(i) is amended by adding "or determination**" after "**designation**".**

Section 19 amended

18(1) Clause 19(1)(a) is repealed and the following substituted:

"(a) an employers' organization has been designated or determined to be the representative employers' organization for the trade division**".**

(2) Subsection 19(2) is repealed and the following substituted:

“(2) An agreement mentioned in subsection (1) must be filed within 90 days after the date of designation or determination**”.**

Section 27 amended

19 Section 27 is amended in the portion preceding clause (a) by striking out “where an employers’ organization is designated**” and substituting “**if an employers’ organization is designated or determined**”.**

Section 29 amended

20 Subsection 29(1) is amended by striking out “Where an employers’ organization is designated**” and substituting “**If an employers’ organization is designated or determined**”.**

Section 34 amended

21 The following clauses are added after clause 34(1)(c):

“(d) prescribing rules of procedure for matters before the board, including preliminary procedures;

“(e) prescribing forms that are consistent with this Act and any other regulations made pursuant to this Act**”.**

Section 37 amended

22 Subsection 37(1) is amended by striking out “department**” and substituting “**ministry**”.**

Transitional

23(1) In this section:

(a) **“collective bargaining agreement”** means a collective bargaining agreement between a trade union, as defined in *The Construction Industry Labour Relations Act, 1992*, and a unionized employer, as defined in *The Construction Industry Labour Relations Act, 1992* that is in force on the day on which this Act comes into force;

(b) **“construction industry”** means the construction industry as defined in *The Construction Industry Labour Relations Act, 1992*.

(2) Notwithstanding the coming into force of clause 3(b) of this Act, if a collective bargaining agreement applies to employees whose activities, as a result of the coming into force of clause 3(b) of this Act, no longer come within the definition of construction industry, the collective bargaining agreement continues in effect in relation to those employees until the date of expiry of the collective bargaining agreement.

(3) Section 33 of *The Trade Union Act* does not apply to a collective bargaining agreement mentioned in subsection (2), insofar as that section relates to employees whose activities, as a result of the coming into force of clause 3(b) of this Act, no longer come within the definition of construction industry.

Coming into force

24 This Act comes into force on proclamation.

REGINA, SASKATCHEWAN
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